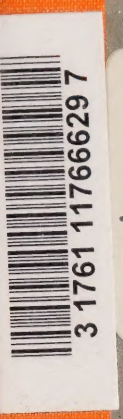

Canada. Dept. of Labour
Trade union law in
Canada. Jan. 1935

DEPARTMENT OF LABOUR, CANADA

HONOURABLE W. A. GORDON
MINISTER OF LABOUR

W. M. DICKSON
DEPUTY MINISTER

TRADE UNION LAW IN CANADA

JANUARY, 1935

OTTAWA
J. O. PATENAUDE
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1935

DEPARTMENT OF LABOUR, CANADA

HONOURABLE W. A. GORDON
MINISTER OF LABOUR

W. M. DICKSON
DEPUTY MINISTER

TRADE UNION LAW IN CANADA

JANUARY, 1935

OTTAWA
J. O. PATENAUDE
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1935

CONTENTS

91589—1½

PREFACE

The present bulletin on the law in Canada regarding trade unions has been prepared with a view to presenting certain aspects of the law as simply and as clearly as possible to all persons interested in the subject. A thoroughly complete and detailed statement of the law, including that laid down in legal decisions, has not been attempted. Embracing as it does such difficult and uncertain branches of the common law as that on restraint of trade, the law of conspiracy and of voluntary associations, together with a few statutes of the Dominion Parliament and of some provincial Legislatures, the law concerning trade unions could hardly be stated completely or briefly without such doubts and qualifications that the general principles which it is desirable to grasp would be lost sight of by all but persons famliar with the subject. The bulletin has been prepared by Miss Margaret Mackintosh of the Department of Labour.

W. M. DICKSON,
Deputy Minister of Labour.

Department of Labour,
Ottawa, January, 1935.

TRADE UNION LAW IN CANADA

INTRODUCTION

The law regarding trade unions in Canada like most branches of Canadian law has been derived from that of England. But Canadian trade union law differs considerably from the existing law in England. The Trade Unions Act passed by the Dominion Parliament in 1872 was drafted from a statute of the Imperial Parliament of 1871, although differing radically from it in its restricted application. In these same years a statute was enacted in each country to prevent violence, intimidation and coercion in connection with labour disputes. In Canada, the Trade Unions Act has not been amended, but the Criminal Law Amendment Act as revised in 1876 to render it more favourable to labour was later altered in important respects considered by the workmen to be adverse to them. In 1934, this part of the criminal law was very largely restored to the position of 1876. In Britain, both statutes have undergone amendment. The Trade Union Act[1] has been revised to permit easier working, while retaining the same principles. The criminal law relating to labour disputes, amended in 1875, was further amended by The Trade Disputes Act of 1906 to give trade unions in Britain greater freedom in the conduct of strikes, particularly in the matter of picketing for the purpose of persuading workmen not to take the place of workmen on strike and in prohibiting actions for damages against trade unions for wrongful acts alleged to have been committed by them. Judicial decisions in Canada in picketing cases, when not based on the common law, generally follow judgments of the English Courts based on the statute law prior to the Trade Disputes Act. Further, except in British Columbia, there is no statute in Canada limiting the liability of trade unions in actions for tort. Moreover, in Britain, any trade union has the legal capacity to institute an action against others within the limits of the statute regarding trade unions but owing to the restricted application of the Canadian Act to registered unions, a wide divergence between English and Canadian law on this point has been revealed in recent cases.

Some complexity in trade union law in Canada arises from the federal character of the Canadian constitution. Statutes affecting trade unions may be either Dominion or provincial according to their subject matter. The Trade Unions Act was passed a few years after Confederation when trade unions were few and isolated and the only phase of the law with which Parliament was then concerned was the criminal law on conspiracy and intimidation. But the Trade Unions Act as copied from that of Britain confers the right to hold property and to sue and be sued in regard to it, a civil right. Criminal law is a matter for the

[1]The English Act was called The Trade Union Act, the Canadian Act, The Trade Unions Act. The English Trade Union Act, 1913, which extended to trade unions the right to use funds for political objects on certain conditions, is not dealt with in this bulletin.

Dominion Parliament but law respecting property and civil rights is a matter for the provincial legislatures under the British North America Act and the constitutional validity of the Trade Unions Act has been questioned. In fact, provincial statutes concerning trade unions were enacted in British Columbia and Quebec in 1902 and 1924 respectively. The text of the Dominion and provincial statutes relating to trade unions is appended to this Bulletin.

To understand the law regarding trade unions in force in Canada it is necessary to know something of the history of both British and Canadian law on the subject. It is necessary also to distinguish between combinations of workmen and combinations of capitalists; to distinguish between what workmen have to sell and what capitalists have to sell. The labour of a workman is inseparable from himself and may be likened to a commodity that perishes daily if not used. Capitalists and traders, to a varying extent, may reserve their articles of commerce until they command a better price. As to the fundamental distinction between combinations of labour and of capital:—

> The trade union movement.....implies that the combination is formed chiefly with reference to parties who are outside it; it is against these parties that defence is to be obtained. On the other hand.....the basis of trusts and cartels is in the phenomena of mutual and excessive competition, its wastes and it fluctuations; the whole aspect of the combination is toward the actual parties who enter it, rather than toward outsiders; they seek mutual insurance against each other, rather than general insurance against exploitation.
>
> Bargaining power and the mutual relations of competitors are, of course, not independent of each other.....The question is one of emphasis and original significance; the original motive of industrial combination was in, and its main concern was toward, the relations of combining firms to each other under modern market conditions; defensive combination has been a secondary result. But the original and fundamental motive of trade unionism is in bargaining. The excesses of labour competition are held to be secondary to, and consequent on, a weak bargaining position.[1]

Another writer puts the case thus:

> In their competitive aspects a basic difference exists between capital and labour. Whereas each firm tends to profit by the cessation of production of its rivals, a cessation of all the workmen but one in a particular industry would give the survivor, not monopoly, but unemployment. Hence the special dependence of the workers on their employers has fostered concerted action, principally for the improvement of bargaining capacity. The chief danger confronting the industrialist is the competition of other capitalists. Consequently the trust and the cartel are primarily a substitution of concerted control for unrestricted trade rivalry.
>
> True, trade unions have enlarged the scope of their original demands. They have on occasion contrived that preference in the granting of employment should be given their own members. In Australia and New Zealand they have obtained the sanction of the law for such a policy. In this respect they have recognized the advantages of controlling competition amongst the employees of each trade. Similarly, combinations of industrialists have directed their attention to evolving a concerted plan of action towards their workmen. But the main and primary difference between the two organizations always remains.

[1]Macgregor, D. H. *Industrial Combination*, London, 1910, p. 169.

It is for this reason that legislation protecting and defining the policy of workmen's organizations may not necessarily be applicable to business combinations.[1]

Canadian law affecting trade unions is found both in the common law of England as in force in Canada and in the statute law. The law of England was introduced in all the provinces of Canada, except Quebec, when they were granted representative government. In Quebec, the civil law of France remained in force. The common law of England is that body of law which has been evolved by the courts from the general custom of the country. It has not been created by Acts of Parliament and is not recorded in the statute books. It is recorded in the reports of law cases and is the groundwork on which the statute law is built. Statutes may merely declare the common law, that is, they may simply reproduce in statutory from the rules first laid down by the Courts or they may introduce entirely new rules or principles which become binding on the Courts. Certain common law doctrines are of great importance in the interpretation of trade union law. Among these are the common law rule as to restraint of trade and the law of conspiracy. "Every person has individually and the public has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction."[2] What is regarded as unreasonable, of course, tends to vary with the natural bent of the individual's mind and the circumstances of his life. This theory as to the right to unrestrained freedom to trade and labour as one pleased grew up as the old statutory restrictions became irksome to industrial development and expanding trade in the eighteenth century.

A conspiracy consists in an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means.[3]

As combinations were formed to pursue objects of trade or labour, they came to be regarded as conspiracies in restraint of trade. The history of trade union law is, in large part, the history of the application of the doctrine of restraint of trade to labour organizations from the stage when, in the eye of the law, a trade union was a criminal conspiracy in restraint of trade to the stage when it is regarded by the law as a voluntary society, the acts of the society being only the acts of its members, but a society whose purposes are generally for the regulation of employment by concerted action in withdrawing labour and requiring obedience to its rules by its members. The agreements of such a society with its members, which are the basis of the organization, are therefore affected by the common law doctrine of restraint of trade.

The common law in the earlier stages of its growth treated all contracts in restraint of trade as contracts of imperfect obligation, if not void for all purposes; they were said to be against public policy in the sense that it was deemed impolitic to enforce them and not because every such contract must necessarily operate to the public injury.[4]

---

[1]Haslam, A. L. *The Law relating to Trade Combinations*, London, 1931, p. 191.
[2]Erle, *Memorandum on Trade Union Law* in Final Report of the Commission on Trade Unions, 1869.
[3]Stephen, *History of the Criminal Law*, vol. 2, p. 227.
[4]Lord Parker of Waddington in *Attorney-General for Australia v. Adelaide Steamship Company*, (1913) A.C. at p. 794.

Only in comparatively recent years has this phase of the law on restraint of trade played a part in the legal history of trade unions in Canada but in Britain the doctrine of restraint of trade was of great importance in shaping the statute law which the Parliament of Canada placed on the statute books of Canada. While some measure of protection against others has been given trade unions under this legislation, yet certain trade union agreements which are in restraint of trade have been allowed to remain unenforceable as they were at common law. In this way, the law reserves to trade unions the right to manage their domestic affairs as other voluntary societies do. In exempting trade unions to some extent from the common law on restraint of trade, however, the law gives to them a peculiar status distinguishing them in some degree from other voluntary societies but falling short of the rights and liabilities of a corporation.

It is important in this connection to remember that the word "unlawful" may be used in three senses. An act may be unlawful because it is a crime, that is, an injury to the general public in some respect or an attack on the persons or property of individuals of such a nature that the public interest is affected. Such an act is punishable by the state. Second, an act may be a violation of a private right, a duty owed to other persons generally or to a particular person or persons. Where the right is a general one which is fixed by law for all persons or a considerable class of persons, violation of it is a civil wrong or tort. In a contract, the rights and duties of the parties are fixed by themselves. A tort or breach of contract gives the person wronged a right of action against the doer who may be liable in damages for his act. Third, an act may be neither a crime nor a tort nor a breach of contract, but it may be unlawful in the sense of being unenforceable at law. Crimes and torts are contrary to the law and a legal remedy is provided; acts of the third kind are merely unrecognized by the law. In legal history, trade unions have been held to be unlawful in each of these ways. They have been regarded as criminal conspiracies, as conspiracies to injure giving rise to civil actions for damages or as neither criminal nor tortious but having no legal right to enforce their contracts or to take action against others for wrong.

TRADE UNION LAW IN BRITAIN

When the British Government appointed a Royal Commission in 1867 to inquire into the organization and rules of trade unions and other associations, whether of workmen or employers, there were three points to which attention was particularly directed:—

(1) trade unions in relation to the law on criminal conspiracy,
(2) picketing, and
(3) protection of trade union funds.

Conspiracy

Before the repeal of the Combination Laws in 1824, the theory had grown up that a combination to raise wages constituted an indictable conspiracy at common law. It is unnecessary to trace here in detail the history of the legal regulation of labour. In 1351, during the reign of Edward III and after the

Black Death had thinned the ranks of the workers, the Statute of Labourers was passed. In force with some revision for over two hundred years, this Act fixed wages for agricultural and other labourers and for artisans. It empowered justices of the peace to hold sessions four times a year and oftener if necessary to ensure that the Act was carried out and to ascertain the wages accustomed to be paid before the Black Death in order that they might be maintained at that level. Later, the justices were allowed to adjust wages according to the cost of living. The Statute of Artificers and Apprentices, 1562, which consolidated and amended the law relating to labourers and artisans, provided for the fixing of wages by the justices and required an apprenticeship term of seven years to be served before any workman could exercise a craft or carry on any manual occupation. As time passed, these restrictions on the freedom of trade appear not to have been strictly enforced, partly because they became gradually unsuited to altered conditions of society and partly because they were contrary, to some extent, to "a leading principle of the common law that an individual is entitled to exercise any lawful trade and employ his labour in any lawful direction he may wish." [1] The wage-regulation clauses of the Elizabethan statute were repealed in 1813 and the apprenticeship clauses in the following year.

Combinations of workmen to raise wages were forbidden incidentally in these old statutes but many combinations of workmen were formed with the object of enforcing either the apprenticeship or the wage-regulation clauses. Such combinations seem to have escaped the condemnation of the Courts and with the changes in the organization of industry and the rise of manufacturing towns, their members, originally concerned with the enforcement of statutory wages, began to take thought how they might increase wages and shorten hours. Accordingly, in the latter half of the eighteenth century, statutes were enacted forbidding combinations for these purposes in particular trades. Thereafter, prosecutions of persons for combining were based either on the violation of the statutes prohibiting such combinations or on the common law offence of conspiracy to contravene the statute. On the other hand, as indicated above, the impression prevailed that combinations to raise wages or alter conditions of work were not only a violation of statute law but were criminal conspiracies at common law.[2]

In 1799, a general Act was passed declaring criminal all combinations of workmen which had as their object the increasing of wages, reducing of hours or otherwise altering conditions of work. Contributions to trade union funds, persuasion and intimidation in connection with strikes were made offences under this Act. In the following year, these provisions were re-enacted with minor amendments in a new statute in which an effort was made towards a more flexible system adapted to developing trade conditions by providing for the arbitration of disputes between employers and employed. All contracts and agreements made between masters for reducing wages or for increasing hours of labour were also declared illegal under certain penalties.

---

[1] Chitty, *Laws relating to Apprentices and Journeymen*, London, 1812, p. 5.

[2] Stephen, v. 3, pp. 209-211. The view that trade unions were criminal conspiracies under the common law appears to have been erroneous.

The Combination Acts proved open to serious abuse. Workmen were frequently convicted by magistrates for contributing to trade union funds and there were numerous convictions for conspiracy but in no case was a successful prosecution brought against a combination of employers. Gradually the principle gained ground that the right of combination could not be denied to workmen if there was to be any equality in bargaining power between employers and employed. Following a report by a Select Committee of the House of Commons on Artisans and Machinery in 1824, Parliament repealed the Combination Laws. Workmen or others entering into any combination to affect wages or hours or other conditions of labour were declared not liable to indictment or prosecution for conspiracy under the common or the statute law. Violence, intimidation, and combining for any purpose of intimidation, were made punishable but attempts at intimidation, etc., were not covered by the Act and the penal clauses were inadequate. Accordingly, after a sharp increase in the number of combinations and the outbreak of numerous strikes, the statute was repealed in 1825 and a new statute enacted. Under the 1825 Act, the Combination Laws remained repealed. Agreements to raise wages or shorten hours made by persons meeting together for that purpose were declared not to be forbidden by that section of the Act which declared certain acts of workmen or other persons to be offences. These acts included violence to persons or property, threats, intimidation, molestation or obstruction for the purpose of forcing or endeavouring to force any other person to leave his work or for the purpose of preventing any other person from being employed or of inducing any person to belong to a trade union or to observe the rules of a trade union or for the purpose of forcing any person to alter his mode of carrying on his business.

Thus, the Act of 1825, unlike the Act of the previous year, repealed the statute law against combinations but left unrepealed that part of the common law under which it was generally held that a combination or agreement to alter conditions of work was a conspiracy because it was a combination in restraint of trade. The Act declared exempt from liability to penal consequences, however, persons entering into agreements to raise wages or shorten hours but made liable to summary punishment persons who employed "threats, intimidation, molestation and obstruction directed to the attainment of the objects of trade unions."[1]

During the following years, labour organizations increased in number and influence and cases came to be decided against them under the common law as to conspiracies in restraint of trade.

> By the common law all combinations of workmen leading to a strike—that is, all agreements between workmen to decline to work simultaneously—are unlawful, unless within the exceptions of the statute, that is, unless for improving wages or for reducing hours.[2]

There appeared to be "no valid or equitable distinction" between the right of workmen to combine with respect to their wages and hours and their right

[1] Ibid., p. 216.
[2] *Minority Report of Royal Commission on Trade Unions* by Frederic Harrison and Thomas Hughes, 1869, p. lv.

to combine with respect to other conditions of labour but the latter could not be done lawfully.

In both the Majority and Minority Reports of the Royal Commission on Trade Unions in 1869, it was recommended that a trade union should not be unlawful by reason only that its operations were in restraint of trade, provided "that no agreement which is void by reason of its operating in restraint of trade, shall be thereby rendered binding."[1] The minority reported that

> It is expedient to declare that workmen and employers may lawfully associate themselves for the purpose of obtaining any terms for their labour or capital that they think fit and may lawfully withhold their labour or capital in concert upon such terms as they choose; and that no combination in pursuance of such agreement shall be indictable as a conspiracy or otherwise, unless it is made with intent to commit or procure the commission of some offence punishable under the general criminal law. . . . .
>
> That the doctrines respecting restraint of trade have been applied to remote consequences in the case of workmen, and with an uncertain effect, and require complete revision; that it is expedient to declare that whilst all combinations of workmen untainted with a criminal purpose are lawful, certain agreements, to be defined, will not be directly enforceable at law, though they will not taint with an ulterior character of illegality combinations into whose purposes they may partially enter.[2]

Picketing

Picketing was defined in the Report of the Commission of 1869 as

> posting members of the union at all approaches to the works struck against, for the purpose of observing and reporting the workmen going to and from the works, and of using such influence as may be in their power to prevent workmen from accepting work there.

As we have seen, the Act of 1825, while freeing combinations of workmen for the purpose of raising wages or reducing hours from liability under the statute law, declared to be offences any violence to person or property, or any molestation or obstruction, in order to prevent workmen from accepting employment or to force or induce any person to join an association or on account of his not belonging to any particular association or in order to force any employer to make any alteration in his mode of carrying on his business or to limit the number of his apprentices or workmen. The vagueness of the terms used in the statute, "threats," "intimidation," and "molestation," made its interpretation variable and led to the conviction of pickets for abusive language and petty acts that have been more properly termed "social offences" than wrongful acts of such a nature that they should be made penal by statute. Further difficulty in applying the Act of 1825 lay in the fact that the intention to coerce or molest, as the case might be, had to be shown as well as the ulterior motive, to force another person to some line of action. In cases coming before the Courts during

[1] Majority Report, p. xxii.
[2] Minority Report, p. lxiii.

the fifties, it was held that peaceful persuasion of others, without threat or intimidation, to cease or abstain from work in order to bring about a change even in wages or hours, was a violation of the statute if done with a malicious motive against an employer.[1]

> In consequence it was by an amending Act of 1859 provided that (in cases in which combination was permitted by statute) no person should by reason merely of his endeavouring peaceably, and in a reasonable manner, and without threats or intimidation, direct or indirect, to persuade, etc., be deemed guilty of molestation or obstruction within the meaning of the Act of 1825 or should therefore be subject to a prosecution or indictment for conspiracy.[2]

But in 1869, in *R. v. Druitt*[3] it was held that pickets acting in combination were guilty of "molestation" for "abusive language and gestures," acts "calculated to have a deterring effect on the minds of ordinary persons by exposing them to have their motions watched, and to encounter black looks."

The majority of the commissioners, considering the subject of picketing in 1867-9, recommended that no change should be made in the law laid down by Section 3 of the Act of 1825 concerning " intimidation " and " molestation." The minority of the commission expressed the conviction

> that the existing law is inequitable . . . . It creates a special and ill-defined class of offence which is unknown to the rest of the criminal system, the punishment of spoken threats and indirect annoyance . . . . It punishes certain acts in the labouring orders of the community which are not penal in any other class . . . . It is so vague that it is readily perverted to an oppressive use. For all these reasons we consider the policy of attempting to suppress for the working class indefinite molestation not otherwise amounting to crime to be mistaken. . . . If the molestation passes into any act cognizable by the ordinary criminal code, it should be dealt with in the criminal code which applies to the acts of all citizens alike . . . . The attempt to suppress picketing by statute must also necessarily be ineffectual . . . . It is expedient to deal with all offences which may be committed by members of such associations under the general law of crime applying to all citizens alike.[4]

Protection of Trade Union Funds

An indirect result of the doctrine of restraint of trade, and under the common law the purposes ordinarily pursued by trade unions were in restraint of the free course of trade and so contrary to public policy, was that the agreements and trusts of trade unions were void and unenforceable. As an unlawful association, a trade union could "neither sue in tort nor sue nor be sued with respect to contract, whether made with members or with others, for any such proceeding would be deemed to be a furtherance of the illegal purposes of the

---

[1] *R. v. Rowlands* (1851) 5 Cox 404; *R. v. Duffield* (1851) 5 Cox 404.
[2] *Report of Royal Commission on Trade Disputes and Trade Combinations*, 1906, p. 10.
[3] 10 Cox 592.
[4] Pp. lvii and lxiii.

trade union."[1] Further, a trade union under the common law had no protection for its property against its own officers or members, since under the law of joint ownership the offending officers or members had the same share in the union property as the other members. They could not therefore be convicted of embezzlement. Thus a trade union with rules in restraint of trade had no civil remedy against dishonest officials; neither could the latter be prosecuted for violation of the property rights of the union. In 1867 when a trade union sought relief from this position by claiming the protection given to friendly societies and endeavoured under the Friendly Societies Act, 1855, to recover funds embezzled by an officer, it was held that a trade union with rules for restraining trade was not a society "for any purpose which is not illegal" as required under the Act.[2] As a result of this decision, the Larceny and Embezzlement Act was passed in 1868 to enable members of a co-partnership to be convicted for stealing or embezzling the funds of the co-partnership. A test case decided that a trade union could prosecute in its character as a co-partnership. But this change in the law, though it enabled trade unions to put defaulting officers in prison, gave them no power to recover the sums due or to take any civil proceedings. Accordingly, a provisional measure was put through Parliament to give temporary protection to trade union funds pending the report of the Royal Commission and the introduction of a complete Bill covering all the matters under consideration.

The Trades Unions Funds Protection Act, 1869, extended to trade unions the provisions of the Friendly Societies Act for the punishment of frauds and impositions. Summary proceedings could be instituted in the name of all the members of a trade union for the recovery of funds misappropriated or embezzled. The Act was not to continue in force after August 31, 1870, but on August 10, 1870, Parliament provided for its continued operation until August 31, 1871, and the end of the subsequent session of Parliament. In the meantime, however, the Trade Union Act, 1871, was passed and it repealed the provisional measure.

Legislation in the Seventies

Following the report of the Royal Commission on Trade Unions in 1869, the Government introduced a Bill in 1871 dealing with the legality of trade unions and the means adopted to attain their objects. The original Bill was

[1] *Report of Royal Commission on Trade Disputes and Trade Combinations*, 1906, p. 4. On the other hand, according to Hedges and Winterbottom, *Legal History of Trade Unionism*, p. 55, "a trade union whether illegal or criminal, could through all its members, prosecute for larceny or sue in trespass for violation of its rights of property by persons other than its members." Reference is made by these authors to Erle's *Memorandum*, 1869, at p. lxxxvi where the following statement is made: "The effect of this (*Hornby v. Close*) has been misunderstood if it is supposed to decide that the members of trade unions have not all the ordinary remedies for violations of rights of property which the members of the community in general possess. They have difficulties from the shifting of members, and from joint ownership, as explained above; but they may proceed by action or indictment where other subjects would have a right to do so, and in those proceedings the legality or illegality of their purposes is immaterial." At p. lxvii of the *Memorandum;* "With respect to rights to property, they are not directly affected by the purposes of the owner of the property: but as unions operate by way of agreement, and as the validity of agreements depends on (among other things) the lawfulness of the purposes comprised in such agreement, the purposes of the unions may thus indirectly affect the rights of the members thereof to the joint property of the union. Accordingly, members of lawful unions have rights to the property of the union the same as other subjects to other joint property. Members of unions for unlawful purposes have no right to assistance from any court for the fulfilment of the unlawful purposes; but for all other purposes except the unlawful (if they can be distinctly severed) they are, I believe, in the same position as unions for lawful purposes."

[2] *Hornby v. Close*, 1867, 2 Q.B. 153. The law as revealed in this decision has a direct bearing on a Canadian trade union case in 1923-24, *Chase v. Starr*, see *infra*, pp. 43-48

later divided into two, one to become the Trade Union Act and the other the Criminal Law Amendment Act. The former was based, largely, on the recommendation of the Minority Report of the Commission. A trade union was defined to mean

> such combination, whether temporary or permanent for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: Provided that this Act shall not affect—
>
> (1) Any agreement between partners as to their own business;
> (2) Any agreement between an employer and those employed by him as to such employment;
> (3) Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

The Act thus applied to combinations of employers as well as to associations of workmen. This phase of the Act will not be dealt with in this Bulletin and the term "trade union" is used throughout to mean a labour organization. Provision was made in the Act for the registration of unions, if the rules were not unlawful otherwise than by being in restraint of trade, and to a registered union was granted the privilege of holding and transferring property in the name of its trustees who were empowered to bring or defend actions regarding it.

Further, merely because its purposes were in restraint of trade, no trade union was to be deemed unlawful so as to render any member liable to prosecution for criminal conspiracy or otherwise. Neither was any agreement or trust to be rendered void or voidable merely because the purposes of the trade union were in restraint of trade but this general statutory legality of the agreements and trusts of trade unions, which had been unlawful at common law, was restricted by Section 4 of the Act. This section provided that nothing in the Trade Union Act should enable any Court to entertain proceedings instituted with the object of directly enforcing or recovering damages for the breach of certain agreements enumerated in the section but nothing in the section was to be deemed to constitute such agreements unlawful. The agreements enumerated include any agreement between the members of a trade union as to dues, fines and benefits, agreements between two trade unions, or any bond to secure the enforcement of any of these agreements. The agreements described are, in general, agreements for carrying out certain rules of trade unions and affect only their internal organization. The domestic affairs of trade unions were thus left subject to their own control. The section

> does not prohibit any Court from exercising in any case jurisdiction which it could have exercised before the Act was passed; the section simply prevents the Court from extending its jurisdiction and interfering in cases in which the Act would authorize interference if it were not for the direct prohibition contained in the section. [1]

Under the Trade Union Act, then, registered trade unions were enabled to protect their property; members of all trade unions, registered or unregistered,

[1] Lord Lindley in *Yorkshire Miners' Association v. Howden*, (1905) A.C. at p. 281.

were freed from criminal liability under the law on conspiracy in restraint of trade; the agreements to which their members were parties and the trusts on which their property was held were rendered enforceable at law but by the exclusion of certain agreements from this provision trade unions retained their freedom to manage their internal affairs free from interference by the courts.

The Criminal Law Amendment Act, 1871, repealed the Combination Act, 1825, and the Molestation of Workmen Act, 1859, and made it a penal offence for any person to use violence to person or property, to threaten or intimidate in such manner as would justify a magistrate binding over such person to keep the peace, or to molest or obstruct any person, with a view to coerce such person to cease or abstain from work, to belong or not to belong to a trade union, to pay a fine or penalty imposed by a trade union, or to alter the mode of carrying on his business or the number of persons employed by him. A person was to be deemed to molest or obstruct another if he followed him from place to place, if he hid his tools, clothes or other property or hindered him in using them, if he watched or beset the house or place where he resided or carried on business or happened to be, or, if, with two or more other persons, he followed such persons in a disorderly manner through any street. The statute left the "judicial decisions untouched and by re-enacting them in a codified form, proposed even to make their operation more uniform and effectual."[1] "A strike was perfectly legal; but if the means employed were calculated to coerce the employer, they were illegal means and a combination to do a legal act by illegal means was a criminal conspiracy."[2] In 1872 workmen were convicted under the common law of conspiracy to coerce or molest their employers in carrying on their business.[3]

> This case substantially decided, as far as its authority went, that, although a strike could no longer be punished as a conspiracy in restraint of trade, it might, under circumstances, be of such a nature as to amount to a conspiracy at common law to molest, injure or impoverish an individual, or to prevent him from carrying on his business. [4]

A Bill to restrict the application of the law on conspiracy was introduced in the House of Commons in 1873 but failed to pass. The numerous convictions for conspiracy and picketing which followed roused the trade union world as never before and in the election of 1874, for the first time official support was accorded by trade unions to "labour" candidates and no fewer than thirteen went to the poll of whom two were elected, the first "labour members" of the British House of Commons. The result of the agitation was the appointment in 1874 of a Royal Commission to inquire into the operation of the "labour laws." The Commission, reporting in 1875, did not recommend any change in the Criminal Law Amendment Act, 1871, except that the accused should have the option of trial by jury. As to the common law on conspiracy, it was recommended that no one should be liable to indictment for conspiracy unless the means of coercion resorted to should be set out in the Criminal Law

[1] Webb, *History of Trade Unionism*, 1920, p. 279.
[2] *Digest of the Labour Laws*, by Frederic Harrison and Henry Crompton, 1875, quoted in Webb, p. 284.
[3] *R. v. Bunn* (1872), 12 Cox 316.
[4] Stephen, *History of the Criminal Law*, vol. 3, p. 226.

Amendment Act or be a wilful breach of contract or procuring others to break a contract of service and unless the object of the coercion should be one set out in the Act. Parliament went further than this, however. The Criminal Law Amendment Act was repealed and in the Conspiracy and Protection of Property Act, 1875, definite limits were set to the application of the law of conspiracy to trade disputes.[1] No act committed by a group of workmen in furtherance of a trade dispute was henceforth to be punishable unless the same act by an individual was itself a criminal offence—

> An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

The words "coerce" and "molest" were omitted from the new statute. The section dealing with intimidation was re-enacted but at the same time it was stipulated that

> Attending at or near the house or place where a person resides or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed to be a watching or besetting within the meaning of this section.

With this enactment, trade unionists thought "peaceful picketing" had been made lawful but judicial decisions in the following years made it clear that picketing for the purpose of "peacefully persuading" was not made legal by the Conspiracy and Protection of Property Act. In the Trade Disputes Act, 1906, picketing for the purpose of "peacefully persuading any person to work or to abstain from working" was added to picketing for the purpose of "peacefully obtaining or communicating information" as a lawful means of furthering a trade dispute.[2]

Other sections of the 1875 Act provided penalties for wilful and malicious breach of contract by any person employed by a municipal authority or company which supplies any town with gas or water if such person has reason to believe that people will be thereby deprived of gas or water. A similar clause relates to breaches of contract which may endanger human life or damage property. An Act of 1919 makes the same provision for municipal authorities supplying electricity.

After the enactment of the 1875 Act, trade unionists had nothing to fear from the law of criminal conspiracy but under the new doctrine of civil conspiracy which first appeared about the middle of the century members of trade

---

[1]Other changes were made in the law following the report of the Royal Commission: The Master and Servant Act, 1867, was replaced by the Employers and Workmen Act and imprisonment for breach of contract dating from the Statute of Labourers, 1351, was abolished. The Trade Union Act, 1871, was amended in 1876 in some points relating to the registration and cancellation of registration of trade unions, amalgamation, dissolution or change of name and friendly benefits. The definition of a trade union was amended to cover all such associations whether they would, or would not, but for the Trade Union Act, have been deemed to be unlawful as being in restraint of trade. The principal Act dealt only with combinations which would have been unlawful at common law.

[2]The Trades Disputes Act, 1906, the Trade Union Act, 1913, and the Trade Disputes and Trade Unions Act, 1927, are not dealt with in this article, having no effect on Canadian legislation or its judicial interpretation.

unions were held liable for damages for conspiracy to coerce an employer or to injure him by interfering with his business.[1] With this development in the law, the Trade Disputes Act, 1906, also dealt in declaring that

> An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

LEGISLATION IN CANADA

Labour organizations were becoming numerous in Ontario and Quebec in the seventies of the last century. There were also trade unions in Nova Scotia and New Brunswick. It was in the two previous decades that relatively large numbers of workmen had congregated for the first time in Canada in industrial centres. These years witnessed a steady growth in the number of trade unions. Unlike the long-established unions in Britain, the Canadian unions were, until 1873, small and isolated and, for the most part, without benefit funds. A few like the printers' unions had affiliated with the national craft unions in the United States. In 1871, the Toronto Trades Assembly was organized as a central body for the trade unions in that city. In 1873, the Canadian Labour Union was formed to draw together the local unions in Ontario and Quebec. In 1879, a central labour organization was established in Nova Scotia and New Brunswick—the Provincial Workmen's Association. A strong influence towards the formation of these central bodies was the agitation for a nine-hour day. Another influence in the same direction was the desire for legislation by the Dominion Parliament and the provincial legislatures protecting trade unions and regulating working conditions.

The typographical union was one of the strongest unions and took an active part in the nine-hour movement. After the refusal of a request for shorter hours in Toronto printing shops on March 5, 1872, a strike was called on March 25. Printers' strikes were on, also, in Hamilton and London. Some twenty-four members of the union in Toronto and a few in other cities were arrested and imprisoned on a charge of criminal conspiracy. Similar action had been taken in Toronto in 1854 in connection with a printers' strike for higher wages and some members of the union had been fined a penny each for conspiracy. In 1872, the Master Printers' Association sought the advice of Mr. R. A. Harrison, Q.C., as to the legality of the strike. The law of England against combinations of workmen or others as it had been in 1792 was part of the law introduced into Upper Canada in that year and was still the law in Ontario. In Mr. Harrison's opinion,[2] a combination of workmen to affect conditions of work was a conspiracy at common law. None of "the protecting statutes" of 1824, 1825 and 1859 was in force in Ontario and, in any case, he pointed out, only combinations to raise wages or shorten hours were freed from criminal liability under the Act of 1825. It did not legalize combinations to induce persons to leave work before the end of the term for which they were hired or to quit work before it was finished or to refuse to enter into employment.

[1] For discussion on thi point, see Jenks, E., *Short History of English Law*, 1924, pp. 332-337.
[2] Full text in *The Globe*, March 30, 1872.

But public opinion in Canada was clearly on the side of the workmen in their fight for the right to organize for their own protection. On May 7, 1872, the Government introduced two Bills which were given second and third reading by the House of Commons on June 12 and assented to on June 14. Thus the Trade Unions Act and the Criminal Law Amendment Act of 1872 came to be enacted. The immediate purpose, in fact the only purpose, at the time the legislation was passed, was to free trade unionists from liability under the common law on conspiracy in restraint of trade. The two Bills, which have formed the statutory basis for numerous judicial decisions in Canada, were drafted from the Trade Union Act and the Criminal Law Amendment Act which had been passed in the United Kingdom in June, 1871.

To digress briefly, it should be noted, as a matter of historic interest, that in the Province of Nova Scotia trade unions had had a different legal history from that in Ontario and the other provinces. In 1816, the Legislature of Nova Scotia passed an "Act to prevent unlawful combinations of master tradesmen and also of their workmen and journeymen"[1] which was similar to the Imperial statute of 1800 except that no provision was made for the arbitration of disputes. This Act remained nominally in force until 1851 when it was repealed.[2] The preamble to the 1816 statute ran as follows:—

> Whereas great numbers of master tradesmen, journeymen and workmen in the Town of Halifax, and other parts of the province, have by unlawful meetings and combinations endeavoured to regulate the rate of wages, and to effectuate other illegal purposes, for remedy whereof . . .

In 1864, the English Act of 1825 repealing the Combination Laws was adopted in Nova Scotia.[3] This enactment remained on the statute books of the province until the year after the passing of the Trade Unions Act by the Parliament of Canada, when it was omitted from the Revised Statutes of Nova Scotia, 1873, on the ground that the subject was one within the jurisdiction of the Dominion.[4]

The Trade Unions Act, enacted by the Parliament of Canada in 1872, was different in one important respect from its model. The Canadian Act was declared to apply only to unions registered in accordance with the terms of the Act. That is to say, the sections declaring trade unions not to be unlawful so as to render the member liable to prosecution for conspiracy or otherwise or so as to render any agreement or trust void or voidable merely because the purposes of the trade union were in restraint of trade, were to apply only to unions registered under the Act. There was little discussion of the Bill in Parliament. Attention was drawn by the Honourable Alexander Mackenzie to the difference between the Canadian Bill and the Act of the United Kingdom of the previous year. Mr. Mackenzie suggested that the clause relating to registration of trade unions was beyond the jurisdiction of the Dominion Parliament, that it was a matter for the local legislature. Curiously, sections 3 and 4 of the British statute are widely separated in the Canadian Act although, by judicial interpretation in Britain, these sections are to be read together as

[1] *Statutes of Nova Scotia*, 1816, c. 27.
[2] *R. S. of Nova Scotia*, 1851, c. 170.
[3] *Statutes of Nova Scotia*, 1864, c. 11.
[4] *R. S. of Nova Scotia, 1873, Appendix B.*

(1) a general provision validating the agreements contained in the rules of a trade union and (2) certain restrictions qualifying that general provision.[1] There were other differences in arrangement. Under the Canadian Act, a trade union does not include a combination for regulating the relations "between workmen and workmen or between masters and masters."

Following the precedent set by the Parliament of the United Kingdom, the Parliament of Canada passed the Criminal Law Amendment Act at the same time as the Trade Unions Act. There was no debate on the Bill. Like its model in Britain, the Criminal Law Amendment Act was unsatisfactory to the workpeople. The Canadian Labour Union, the Toronto Trades Assembly and other local unions urged its repeal and in 1874 a Select Committee of the House of Commons was appointed to consider what changes were desirable. Reporting on May 19, the Committee stated:

> Notwithstanding the stringency of the provisions in the Act against acts defined as "Molestation by Workmen," and not otherwise offences, the working classes were led to believe that the two measures referred to, taken together, would greatly ameliorate the hardship of the laws previously existing.
>
> It is nevertheless felt both in England and in Canada, that the Judicial construction which has been placed upon the provisions of the Act differs from the impression which had been generally formed of them, and such construction has not operated as fairly to the working classes as the respective Legislatures of the two countries intended in enacting them.
>
> And this Committee is of opinion that further and more remedial legislation is required. . . . Your Committee, while admitting that the law is unsatisfactory, and that it is capable of being administered oppressively and requires amendment, have to testify that no cases of hardship or oppression in its application in the Dominion have been brought under their notice.
>
> And in consequence of the probable prorogation of the Session at an early day, the deliberation and care necessary to frame a perfect measure, and the action which it is anticipated the Imperial Parliament are about to take on this subject, your Committee recommend that the Government deal with the whole question at the next Session of Parliament.

But the report of the British Commission appointed to inquire into the subject did not reach Canada during the 1875 session and members for industrial cities like Hamilton were being hard pressed by their working-class supporters and by the Canadian Labour Union which had held its annual meeting in Ottawa in September, 1874. Public meetings were held in Toronto, Hamilton, Ottawa and St. Catharines urging the repeal of the Criminal Law Amendment Act. It was pointed out that the law already made provision for the imprisonment of any person who in pursuance of any unlawful combination or conspiracy to raise the rate of wages or respecting any trade, business or manufacture or any person concerned or employed therein, unlawfully assaulted any person or used any violence or threats of violence to any person with intent to hinder him from working or being employed at such trade or business. This section was contained in a law relating to criminal offences enacted in 1869[2] and copied from the 1861 consolidation of the law in the United Kingdom relating

[1] Sophian, T. J., *Trade Union Law and Practice*, London, 1927, p. 198.
[2] *Statutes of Canada*, 1869, c.20, s. 42.

to offences against the person. This particular clause was repealed in Britain by the Criminal Law Amendment Act, 1871, but has not yet been repealed in Canada.[1] It was thought by those advocating the repeal of the 1872 criminal law amendment that the 1869 provision was a sufficient guard against violence or intimidation by workmen, at least until the Government could study the report of the Royal Commission in Britain.

Accordingly, Mr. Aemilius Irving, member for Hamilton, introduced in 1875 a Bill to repeal the Criminal Law Amendment Act, 1872. He was supported by Mr. Thomas Moss, member for West Toronto.[2] The sponsors of the repeal Bill were prepared to withdraw their measure if the Government would undertake to examine and bring down a Bill similar to that pressed in the British House in 1873 by Sir William Harcourt and others.[3] This undertaking was given, Irving's Bill was withdrawn and a Government measure to amend the Act was introduced by the Hon. T. Fournier, Minister of Justice, and passed.[4]

The only important change made in the intimidation section of the 1872 Act was the omission of watching and besetting as a form of molestation and obstruction. But in two sections, based on Harcourt's Conspiracy Bill, it was enacted that

> 2. A prosecution shall not be maintainable against a person for conspiracy to do any act, or to cause any act to be done for the purposes of a trade combination, unless such act is an offence indictable by Statute or is punishable under the provisions of this Act; nor shall any person, who is convicted upon any such prosecution, be liable to any greater punishment than is provided by such Statute or by this Act for the act of which he may have been convicted as aforesaid.
>
> 3. For the purposes of this Act, "trade combination" means any combination between masters or workmen or other persons, for regulating or altering the relation between any persons being masters or workmen, or the conduct of any master or workmen in or in respect of his business or employment, or contract of employment or service; and the word "act" includes a default, breach or omission.

Before the Canadian Parliamentary session of 1876 opened, the British Parliament enacted the Conspiracy and Protection of Property Act, 1875. The Canadian Government thereupon brought in a Bill, which was passed, repealing the Act of 1875 but re-enacting the two sections on conspiracy quoted above. A new section on intimidation was based on the Imperial statute of 1875:

> 1. Every person who wrongfully and without legal authority, with a view to compel any other person to abstain from doing anything which he has a legal right to do, or to do anything from which he has a legal right to abstain,—

---

[1] A statute of the Province of Canada, 1841, c. 27, consolidating the law relating to offences against the person, provided a penalty for assaults in pursuance of combinations to raise wages and for hindering by force any seaman from working at his trade. As the first of these clauses appears to relate to the unlawfulness at common law before 1872, of combinations to raise wages, it may be regarded as obsolete. These provisions were amplified in the statute of 1869. The section relating to seamen was amended in 1887 (c. 49) at the instance of the Quebec shipping interests to include threats of violence as well as actual violence and to apply to casual labourers working about ships. These sections of the 1869 statute, as amended, form s. 502 of the present Criminal Code.

[2] *Debates of the House of Commons*, March 24, 1875.

[3] Harcourt's Bill was passed by the Commons but thrown out by the House of Lords.

[4] *Statutes of Canada*, 1875, c. 39.

(1) Uses violence to such other person, or his wife or children, or injures his property; or—

(2) Intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or—

(3) Persistently follows such other person about from place to place; or—

(4) Hides any tools, clothes or other property owned or used by such other person, or deprives him, or hinders him in the use thereof; or—

(5) Follows such other person with one or more other persons in a disorderly manner in or through any street or road; or—

(6) Besets or watches the house or other place where such other person resides or works or carries on business or happens to be —

Shall be liable to a fine not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months:

Attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

In the Criminal Law Amendment Acts of 1872 and 1875, the only penalty was imprisonment. The statute of 1876 provided an alternative penalty of a fine. Further, under the Acts of 1872 and 1875, an accused person was to be tried by a Court of summary jurisdiction. Under the 1876 Act the accused was given the option of trial by a jury.

In 1877, the Breaches of Contract Act repealed that part of the law in Ontario, Quebec and Prince Edward Island which made any breach of contract of service a crime, but declared criminal certain wilful and malicious breaches of contract which were likely to endanger life or property, to deprive a town of gas or water or to delay or prevent the running of trains. The sections dealing with the supply of gas or water and damage to life or property were modelled on sections 3 and 4 of the English Conspiracy and Protection of Property Act, 1875. The section relating to train service was included as a result of the disruption of traffic due to a strike of railroad employees early in 1877. This Act, omitting the word "maliciously" and including contracts affecting the supply of power and electric light, is now section 499 of the Criminal Code of Canada.

Amendments After the Seventies

Important changes have been made in the criminal law relating to conspiracy and intimidation as amended in 1876. No amendments have been made directly to the Trade Unions Act but the codification of the criminal law brought about an extension of some of its provisions. These changes may be set out briefly.

First, as to the Trade Unions Act. As pointed out above, this statute conferred on the members of registered trade unions freedom from liability to prosecution for conspiracy merely on the ground that the purposes of the union were in restraint of trade. When the criminal law of Canada was codified in 1892, this section of the Trade Unions Act was embodied in the Criminal Code.

With its removal from the restricting clause of the 1872 Act and the enactment of the Code by Parliament, the section became applicable to all labour organizations, registered and unregistered. A new section was added to the Code defining a conspiracy in restraint of trade as an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade.[1] An order in council approving regulations for the registration of unions was passed February 5, 1875. In 1886 and 1889, the Trades and Labour Congress of Canada adopted a resolution to petition

> the Dominion Government to appoint the officers required by the Trade Unions Act to give it effect and enable labour organizations to incorporate under its provisions.

An order in council of April 9, 1890, pointed out that no appointment was required to give the Act effect as the Registrar General of Canada was the registrar under the Trade Unions Act.

The changes in the law regarding conspiracy and intimidation are of a different nature. In 1886, the statutes of Canada were revised for the first time since Confederation. In the revision, the Act of 1872 as amended in 1876 underwent some alteration in wording and arrangement but one change was made in the legal effect. The section quoted above as section 2 of the Act of 1875 and which became section 4 of the Act of 1876, was altered to read as follows:

> No prosecution shall be maintainable against any person for conspiracy to do any act or cause any act to be done for the purpose of a trade combination unless such act is an offence *punishable* by statute.

The phrase "punishable by statute" replaced the words "indictable by statute or punishable under this Act" as they were enacted in 1876. The Honourable Edward Blake, who, as Minister of Justice at that time, had been responsible for the 1876 statute, protested against the change which had been made in the wording when the section was under discussion in the House of Commons in 1890. Mr. Blake pointed out that the use of "punishable" instead of "indictable" removed the protection that the section gave against the old law of conspiracy as applied to many minor offences.[2]

In 1890, the section was amended further by Parliament to meet the demands of trade unions following a decision in a Hamilton case. In 1888, members of the bricklayers' and masons' union in that city, who had passed a resolution not to work for a contractor employing a non-union man and who struck work to enforce their policy, were convicted of conspiracy under the Act of 1876. The judgment was confirmed by the Queen's Bench Division of the High Court.[3] Vigorous action by the unions and the Trades and Labour Congress of Canada followed and at their request, a private member's Bill was introduced at the 1889 session of Parliament to add the words "refuses to work with or for any employer or workman" to the clause prohibiting prosecution for conspiracy. The Bill received only first reading. During the

[1] *Statutes of Canada*, 1892, c. 37, ss. 516, 517.
[2] *Debates of the House of Commons*, 1890, pp. 3373-6.
[3] *R. v. Gibson*, (1888), 16 O.L.R. 704.

next session, practically the same section was enacted in a Government Bill.[1] Section 590 of the present Criminal Code reads—

> No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute.

In the trial of certain persons connected with the general strike in Winnipeg in 1919, several charges of conspiracy were held not to be protected by this section and to be offences indictable by statute.[2]

Another change made in the criminal law affecting workmen was regarded as a further restriction on their right to picket during a strike. As we have seen, the statute of 1876, like the Act of 1872, declared it an offence to beset or watch the house or other place where a person resided or worked or carried on business or happened to be. The 1876 Act stipulated that such besetting or watching must be done

> wrongfully and without legal authority, with a view to compel any other person to abstain from doing anything which he has a legal right to do or to do anything from which he has a legal right to abstain.

The qualifying clause was added:

> Attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

When Parliament enacted the Criminal Code in 1892 it repealed the Criminal Law Amendment Act of 1872 as amended in 1876 but re-enacted the intimidation section of the 1876 Act, omitting the qualifying clause. The latter was dropped, apparently, by the Joint Committee of the Senate and the House of Commons to which the Bill to codify the criminal law was referred.

1905, at the request of the Trades and Labour Congress,[3] the words "at the option of the accused" were inserted in this section[4] as it appeared in the Criminal Code of 1892, in order to make it quite clear that it was the person charged with an offence who had the right to choose a summary trial or trial by jury. It was pointed out during the debate on this amendment in the House of Commons that the words proposed to be added were unnecessary since the accused already had this right. The insertion of the words was urged, however, by organized labour following the conviction of pickets by a Toronto magistrate who held that he had the option of deciding whether the accused should be tried by a jury.[5]

Adverse decisions in picketing cases, particularly by magistrates, and the difference between the English and Canadian law on picketing following the change made in 1892 and more especially after the enactment of the Trade Disputes Act in Britain in 1906, caused trade unions to press on the Dominion Government the amendment of the law either by restoring the qualifying clause of

---

[1] *Statutes of Canada*, 1890, c. 27, s. 19.
[2] *R. v. Russell* (1920) 1 W.W.R. 624.
[3] Proceedings, 1904, p. 34; 1905, p. 48.
[4] *Statutes of Canada*, 1905, c. 9, s. 3.
[5] *Debates of the House of Commons*, 1905, pp. 9436-7. See also s. 3 of Act of 1876 and speech of Edward Blake in House of Commons on Bill to amend the Criminal Law, s. 18, on April 15, 1890, p. 3374.

1876 or by enacting a section similar to section 2 of the Trade Disputes Act which replaced the qualifying clause in the Conspiracy and Protection of Property Act, 1875. Section 2 of the Trade Disputes Act reads:

> (1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

No action was taken by the Government until 1934 when an Act of that year[1] to amend the criminal law included a section amending section 501 of the Criminal Code by repealing the superfluous words "at the option of the accused" and adding the qualifying clause permitting picketing merely for the purpose of obtaining or communicating information. The section now reads:

> 501. Every one is guilty of an offence punishable on indictment or on summary conviction before two justices and liable on conviction to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour, who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain,
>
> (*a*) uses violence to such other person, or his wife or children, or injures his property; or
>
> (*b*) intimidates such other person or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or
>
> (*c*) persistently follows such other person about from place to place; or
>
> (*d*) hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or
>
> (*e*) with one or more other persons, follows such other person, in a disorderly manner, in or through any street or road; or
>
> (*f*) besets or watches the house or other place where such other person resides or works or carries on business or happens to be;
>
> (*g*) attending at or near or approaching to such house or other place as aforesaid in order merely to obtain or communicate information shall not be deemed a watching or besetting within the meaning of this section.

No other changes have been made in the laws of the Dominion Parliament, affecting trade unions but in each of the statutes for the regulation of combines operating to the detriment of the public, a clause was added to stipulate that nothing in the statute "shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees."[2]

---

[1] *Statutes of Canada*, 1934, c. 47, s. 12.

[2] C. C. 498, subsec. (2). This clause was first enacted in 1900, c. 46, though a somewhat similar proviso had been attached to the Combines Bill, 1889. In 1889, the Senate altered the clause entirely; the section thus altered and enacted was dropped when the Criminal Code was adopted in 1892: the original form was revived in 1897 and 1899 in Senate Bills and passed both Houses in 1900. A similar clause was included in the laws on combines enacted in 1910, c. 9; 1919, c. 43; 1923, c. 9.

LEGAL POSITION OF TRADE UNIONS UNDER THE LAW OF THE DOMINION

The legal position of trade unions in Canada,[1] then, differs from that in Great Britain. In both countries,

> trade unions in substance remain in the class of what are called voluntary societies—voluntary not because it is a matter of free choice whether a man will belong to such a society or not, for this may be equally true of membership of a corporation, but because its legal existence, so far as it has a legal existence, is the creation of the will, real or presumed, of its members and does not require the co-operation of any public authority.
>
> It has come into existence simply because its members have agreed to associate; as soon as that agreement is lawfully ended, the association ceases to exist. Nothing beyond this agreement is necessary for its constitution; nothing beyond the lawful ending of the agreement is needed to put an end to the association. The acts of the association are, in the eye of the law, the acts of its members or at least of some of its members; its rights and liabilities are ultimately analysable in accepted legal theory into the rights and liabilities of individual persons. Thus there is no special law of associations in England [or in Canada]. The law governing associations is in substance the general law of contract, of agency and of property applied to aggregates of numerous individuals. There is not and never has been any general law forbidding, nor has any special law been needed to allow persons to associate.[2]

The basis of a voluntary society is a contract which regulates the rights and duties of the members to each other. Such a contract is binding on the parties and each member is entitled to claim at law observance of the terms from the others. Officers appointed by the society are in law its agents and the acts of the agents are the acts of the members. Under the common law, property may be owned by two or more individuals as co-owners and the law of trusts enables such property to be vested in trustees who hold it on behalf of the members of the society. The principles of the law of contract, of agency and of property, when applied to a voluntary society as a collectivity of numerous persons untainted with illegality, determine the liability of the society and its members for breach of contract or for wrongful acts.

> In case of associations for purposes other than those of individual profit, the principle is established, at any rate as regards contractual liabilities, that the authority conferred by the members on the agents is not an authority to pledge the credit of each member generally, but only to the extent of the common property. . . . In the case of liability for wrong, it seems that no attempt has ever been made to establish any wider liability of the members. On the other hand, it is clear that within the ordinary limits of the liability of a principal for the acts of his agent, the social property will be liable whether for contract or wrong, through the medium of proceedings brought by the stranger against the members generally in what is called a "representative" action, a few prominent members being selected to represent all; or against the trustees in whom the

---

[1] In British Columbia, Manitoba and Quebec, there are statutes dealing with trade unions, the Trade Unions Act, the Industrial Conditions Act and the Professional Syndicates Act, respectively. These statutes will be discussed later. The general statement which follows applies to trade unions in Manitoba, but not in all respects to trade unions in British Columbia and Quebec.

[2] Geldart, W. M., The Status of Trade Unions in England, (1912) 25 *Harvard Law Review*, 579.

> common property is vested; or by proceedings brought by an officer who has been compelled to pay damages to a stranger, for an indemnity against the members and trustees. In this way the social property is treated in effect as being what it is in truth,—the property of a body distinct from its members. . . . The liability of unions and their funds (apart from recent legislation[1]) follows from the general principles of agency applied to voluntary societies, and, independently of any special status conferred on registered unions, is enforceable by means of a representative action. The existence and extent of the agency is, of course, a matter of fact, so long, at any rate, as the acts done are within the purposes for which the union legally exists.[2]

In an action in British Columbia, on behalf of a local union for relief against the International Brotherhood of Electrical Workers for revoking its charter, it was held by a Supreme Court judge that

> the rights possessed by a local union, which is a branch of a parent voluntary association, are similar to those enjoyed by a member of a social club. While there is a scarcity of decisions as to the rights of such a local or branch union as a whole, with respect to an association which granted its charter, still it could obtain an equal standing and right of redress, through its members, with that acquired by an individual member in a local union or social club. . . . While neither the international brotherhood, nor the local union is registered, nor incorporated, and, in one sense, is not a legal entity, still its constitution, coupled with the payment of prescribed fees, constitute a contractual relationship between parties.[3] . . .
>
> If the power exists in officials of a craft brotherhood to revoke the charter of a local union, the Court will not interfere to review the decision to revoke if the power has been exercised in good faith and legally. If it has been exercised by an unauthorized procedure, without adequate and sufficient notice to the local union of the charges against it and of the possibility of revocation should they be established and an opportunity of being heard in defence, such procedure being not in accordance with natural justice, the power has not been exercised "legally" and the Court will interfere against the carrying out of such revocation, and in doing so will not consider the merits of the question whether the local union has in fact so violated the constitution as to have justified the revocation had a fair trial been had. The fact that the local union has taken and pressed an appeal through the proper channels of the organization does not prevent it from obtaining redress through the Courts, nor does the fact of its being heard on such appeal overcome the objection that it did not have a fair trial in the first instance.[4]

The judgment restored the charter of the local union and enjoined one of the Canadian officers of the Brotherhood from depriving it of its rights and privileges. This case is similar to those that arise in connection with voluntary societies of different kinds and relates only to the rights of members, or branches, as laid down in the constitution and rules of the society. That the society concerned was a labour organization did not affect the consideration of the case. The question as to the legality or illegality of the trade union under the common law on restraint of trade did not come before the Court.

---

[1]Written in 1912; Trade Disputes Act, 1906, exempts a trade union from liability for wrongful acts alleged to have been done by or on behalf of the union.

[2]Geldart, pp. 583-4 and 594.

[3]Macdonald, J., in *Morrison v. Ingles*, (1920) 2 W.W.R. at p. 59.

[4]Headnote.

Liability of Trade Unions

With respect to actions against them for tort, trade unions in Canada appear to be in the same position before the law as other voluntary societies. In England, before the Trade Union Act, 1871, all the members of a trade union were, in theory, liable to be sued for damages resulting from any wrong committed by them as a society. Since the union, however, had no legal personality, that is, it was not an individual or a corporation, it could not be sued as a union but only through all its members. But the rule that damages could not be recovered against any person or persons not named as defendants in an action made it impossible to enforce a judgment against a large number of persons such as the members of a trade union. Hence, an action against a trade union was in practice impossible until a new rule was made in 1883 permitting numerous persons having the same interest in one cause to be represented by one or more duly authorized persons. A similar rule had for some years applied only to cases of contract which were dealt with by the Courts of Equity but, after 1873 when the common law Courts which dealt with tort and the Courts of Equity became divisions of the new Supreme Court the distinction between legal and equitable rules as regards parties to a suit was abolished. The new rule permitted similar procedure in cases of tort and contract when numerous persons were involved.[1] Thus, the general principle of English law that all persons are liable in damages for legal wrongs which result in injury to others, which had always been applicable in theory to voluntary societies such as trade unions but was impossible in practice because of the difficulty in procedure now became practicable by means of "a representative action." But for a time there was some uncertainty about the matter owing to a pronouncement made in 1893 in *Temperton v. Russell*[2] that the rule permitting representative defendants to be named in an action against numerous persons did not apply to trade unions but only to persons "who have or claim a beneficial or proprietary right which they are asserting or defending." The judgment in the case was in favour of the defendant unions which the plaintiff sought to sue in a representative action. In 1900, in *Duke of Bedford v. Ellis*[3] it was pointed out that the representatives named in the earlier case did not properly represent the unions and the judgment was sound but that the opinion as to the rule for representation not applying to trade unions was erroneous. The House of Lords held the rule to be universal in its application. Before all the judgments were delivered in the *Duke of Bedford* case, however, the celebrated *Taff Vale* action was begun, the leading English case involving the liability of a trade union to be sued in tort.[4]

In view of the numerous references by Canadian Courts to the judgment in the *Taff Vale* case and to the remarks of Lords Lindley and Macnaghten as to the propriety of a representative action against a trade union, the legal situation at the time should be borne in mind. First, because of the misleading dictum in *Temperton v. Russell* referred to above, it was considered when the *Taff Vale*

[1] *Report of Royal Commission on Trade Disputes and Trade Combinations*, pp. 4, 6.
[2] (1893) 1 Q.B. 715.
[3] (1901) A.C. 1.
[4] *Taff Vale Railway Company v. Amalgamated Society of Railway Servants*, (1901) A.C. 426.

case came up that a trade union could not be sued in tort by means of a representative action which was the only procedure that could be used to bring suit against a voluntary association composed of numerous persons. Second, the Trade Union Act, 1871, conferred on registered unions only a limited status, not full legal personality. It enabled a registered union to sue and be sued through its trustees only with respect to its property. There was no reference in the Act to the liability of a registered union for tort. From these two circumstances, there arose the general belief that a trade union was not liable in tort for the acts of its agents; that it, or rather all its members, could not be sued in a representative action according to the dictum in *Temperton v. Russell,* and that it could not be used in its own name under the Trade Union Act.

In the *Taff Vale* case, the action was against the Amalgamated Society of Railway Servants, a trade union of which the plaintiff's employees were members, for damages resulting from a strike and for an injunction restraining the defendants from watching or besetting the plaintiff's premises for the purpose of persuading or otherwise preventing persons from working for the plaintiff. The society was registered under the Trade Union Act and the action was brought against the union in its registered name. Farwell, J., giving judgment while the *Duke of Bedford* case was before the House of Lords, held that the defendant trade union was liable for the wrongful conduct of its agents and granted restraining orders against two officers and the society itself. Farwell, J., dealt only with the question before him—the liability of a registered trade union to be sued in its registered name. *Temperton v. Russell* was law and the misleading dictum had not yet been corrected.

> Although a corporation and an individual or individuals may be the only entity known to the common law who can sue or be sued, it is competent to the Legislature to give to an association of individuals which is neither a corporation nor a partnership nor an individual a capacity for owning property and acting by agents, and such capacity in the absence of express enactment to the contrary involves the necessary correlative of liability to the extent of such property for the acts and defaults of such agents. . . . The proper rule of construction of statutes such as these is, that in the absence of express contrary intention, the Legislature intends that the creature of the statute shall have the same duties, and that its funds shall be subject to the same liabilities as the general law would impose on a private individual doing the same thing. . . . If, therefore, I am right in concluding that the society are liable in tort, the action must be against them in their registered name.[1]

The orders of Farwell, J., were set aside by the Court of Appeal which held that a trade union could not be sued in its registered name since the Trade Union Act granted registered unions only the power to sue and be sued through trustees with respect to their property. On appeal to the House of Lords, this judgment was reversed and the restraining orders restored. Their Lordships were in agreement that a trade union registered under the Trade Union Act could be sued for wrongs done by its members with its authority which resulted in injury. Meantime, the House of Lords had given judgment in *Duke of Bedford v. Ellis* and had corrected the statement made in *Temperton v. Russell* that a representative

[1]Farwell, J., at pp. 429, 430-431.

action could only be brought against defendants who had a "beneficial proprietary" interest in the action. But the *Duke of Bedford* case was not concerned with a labour organization and so their Lordships considered it desirable in the *Taff Vale* judgment to make the legal position clear and free from ambiguity. In adopting the judgment of Farwell, J., Lord Halsbury stated:—

> If the Legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken, I think, to have impliedly given the power to make it suable in a Court of Law for injuries purposely done by its authority and procurement.[1]

Lord Macnaghten pointed out that there were two questions to be decided, one a question of substance, the other a question of form. To the first question—

> Has the Legislature authorized the creation of numerous bodies of men capable of owning great wealth and of acting by agents with absolutely no responsibility for the wrongs they may do to other persons by the use of that wealth and the employment of those agents?[2]—

the answer was that trade unions were not above the law in respect of liability for wrong inflicted by their agents.

> Then, if trade unions are not above the law, the only remaining question, as it seems to me, is one of form. How are these bodies to be sued? I have no doubt whatever that a trade union, whether registered or unregistered, may be sued in a representative action if the persons selected as defendants be persons who, from their position, may be taken fairly to represent the body. As regards this point, Mr. Haldane relied on the case of *Temperton v. Russell;* but *Temperton v. Russell,* as I said in *Duke of Bedford v. Ellis,* was an absurd case. The persons there selected as representatives of the various unions intended to be sued were selected in defiance of all rules and principle. They were not the managers of the unions—they had no control over it or over its funds. They represented nobody but themselves. Their names seem to have been taken at random for the purpose, I suppose, of spreading a general sense of insecurity among the unions who ought to have been sued, if sued at all, either in their registered name, if that be permissible, or by their proper officers—the members of their executive committees and their trustees.
>
> Mr. Haldane, indeed, was bold enough to say that if a wrong was committed by a body of persons, acting in concert, who were too numerous to be made defendants in an action, the person injured would be without remedy, unless he could fasten upon the individuals who with their own hands were actually doing the wrong. . . . I should be sorry to think that the law was so powerless; and therefore it seems to me that there would be no difficulty in suing a trade union in a proper case if it be sued in a representative action by persons who fairly and properly represent it.
>
> The further question remains: may a registered trade union be sued in and by its registered name? For my part, I cannot see any difficulty in the way of such a suit. It is quite true that a registered trade union is not a corporation but it has a registered name and a registered office. The registered name is nothing more than a collective name for all the members . . . . And when I find that the Act of Parliament actually provides for a registered union being sued in certain cases for penalties by its registered

[1] At p. 436.
[2] At p. 438.

name, as a trade union, and does not say that the cases specified are the only cases in which it may be so sued, I can see nothing contrary to principle, or contrary to the provisions of the Trade Union Acts, in holding that a trade union may be sued by its registered name.[1]

Lord Lindley dealt with the two points:

> The problem how to adapt legal proceedings to unincorporated societies consisting of many members is by no means new. The rules as to parties to common law actions were too rigid for practical purposes when those rules had to be applied to such societies. But the rules as to parties to suits in equity were not the same as those which governed courts of common law, and were long since adapted to meet the difficulties presented by a multiplicity of persons interested in the subject-matter of litigation. Some of such persons were allowed to sue and be sued on behalf of themselves and all others having the same interest. . . .
>
> The principle on which the rule is based forbids its restriction to cases for which an exact precedent can be found in the reports. The principle is as applicable to new cases as to old, and ought to be applied to the exigencies of modern life as occasion requires. The rule itself has been embodied and made applicable to the various Divisions of the High Court by the Judicature Act, 1873, ss. 16 and 23-25, and Order XVI., r. 9; and the unfortunate observations made on that rule in *Temperton v. Russell* have been happily corrected in this House in the *Duke of Bedford v. Ellis* and in the course of the argument in the present case.
>
> I have myself no doubt whatever that if the trade union could not be sued in this case in its registered name, some of its members (namely, its executive committee) could be sued on behalf of themselves and the other members of the society, and an injunction and judgment for damages could be obtained in a proper case in an action so framed. Further, it is in my opinion equally plain that if the trustees in whom the property of the society is legally vested were added as parties, an order could be made in the same action for the payment by them out of the funds of the society of all damages and costs for which the plaintiff might obtain judgment against the trade union.
>
> I entirely repudiate the notion that the effect of the Trade Union Act, 1871, is to legalize trade unions and confer on them the right to acquire and hold property and at the same time to protect the union from legal proceedings if their managers or agents acting for the whole body violate the rights of other people. For such violation the property of trade unions can unquestionably in my opinion be reached by legal proceedings properly framed. The Court of Appeal has not denied this; but the Court has held that the trade union cannot be sued in its registered name and in strictness the only question for determination by your Lordships now is whether the Court of Appeal was right. . . . If I am right in what I have said, this question is of comparatively small importance: it is not a question of substance but of mere form and turns on the Trade Union Act, 1871, and the Act of 1876 amending it. The Act does not in express terms say what use is to be made of the name under which the trade union is registered and by which it is known. . . . The Act appears to me to indicate with sufficient clearness that the registered name is one which may be used to denote the union as an unincorporated society in legal proceedings as well as for business and other purposes. The use of the name in legal proceedings imposes no duties and alters no rights; it is only a more convenient

[1] At p. 438.

> form of proceeding than that which would have to be adopted if the name could not be used. I do not say that the use of the name is compulsory, but it is at least permissive.
>
> Your Lordships have not now to consider how a judgment or order against a trade union in its registered name can be enforced. I see no difficulty about this; but, to avoid misconception, I will add that if a judgment or order in that form is for the payment of money it can, in my opinion, only be enforced against the property of the trade union, and that to reach such property it may be found necessary to sue the trustees.[1]

As a result of the *Taff Vale* decision, it was provided in section 4 (1) of the Trade Disputes Act passed in 1906 that an action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union should not be entertained by any Court.[2] The section expressly prohibits an action against a union through representative defendants as well as an action against a union in its own name.

From the point of view of Canadian trade unions at the present time, the decision on the question before the Court in the *Taff Vale* case—that of the liability of a registered union to be sued in its own name for torts committed by its officers or members as such—is not of such interest as the remarks made on the liability of unregistered unions to be sued by means of a representative action. These remarks can hardly be considered entirely aside from the question at issue since, when the action was instituted, it was believed that a representative action could not be maintained. The whole question then of the liability of trade unions for tort seemed to depend on the judgment in the *Taff Vale* case, the first one of the kind affecting a labour organization to reach the House of Lords. There were many, too, who believed that the Trade Union Act placed trade unions which registered under it in a favoured position as regards the law of liability for tort. The judgment, therefore, declared that it did not do so, that any trade union was liable for wrongs committed by its members by its authority, that Parliament had enabled a trade union to use in the legal proceedings expressly permitted by the Act the name under which it was registered and, such being the case, the name could be used in other legal proceedings to which the union was liable under the general law.[3]

In 1913, in a judgment of the House of Lords in a suit against a trade union, Lord Atkinson said:

> The law upon the subject of the liability of a trade union to be sued in tort at the time this statute was passed was, I think, this: Under the decisions in the cases of *Duke of Bedford v. Ellis* and the *Taff Vale* Case

---

[1] At p. 442.

[2] Section 4(2) provides that:

> Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trade Union Act, 1871, section 9, except in respect of any tortious act committed by or on behalf of the union in contemplation or furtherance of a trade dispute.

Section 9 of the Act of 1871 enables trustees of a registered union to bring or defend actions touching the property of the union. S. 4(2), then, preserves the liability of the trustees under the Act of 1871, except as to acts in furtherance of a trade dispute, Lord Atkinson in *Vacher's* case, *infra*, p. 37 footnote.

[3] For a criticism of this judgment as to the liability of a registered union, see Jenks, Edward, *Short History of English Law*, London, 1912, p. 335. On the other hand, see comment on Trade Disputes Act, 1906, as conferring on trade unions freedom from civil liability for tort in Dicey, A. V., *Law and Public Opinion in England*, London, 1914, p. x. v.

it must, I think, be taken (1) that a trade union, registered or unregistered, could be sued in respect of torts committed by its agents in a representative action, provided the selected defendants were fairly representative of it; (2) that a registered society might be sued in its registered name; and (3) that if the trustees were made defendants in such actions, an order could be made by the Court binding on them for the payment by them of the damages and costs recovered, out of the funds of the society in their hands. Lord Lindley lays down this last proposition in so many words at p. 443 of the *Taff Vale* Case. So that it is not at all necessary that, judgment being recovered against the union in either of such actions, a second action, founded on that judgment, should be brought against the trustees to recover the amount of the damages and costs which the judgment had converted into a specialty debt. Equitable execution against the property of the union held by the trustees could be obtained in the original suit, if they were made parties to it.[1]

In Canada, in all the provinces but Quebec,[2] it appears that an unincorporated association, or, more properly, all the members of an unincorporated association, may be sued by means of a "representative action," provided the circumstances of the case bring it within the conditions laid down by the rule which is as follows, the wording varying slightly in different provinces:

> Where there are numerous persons having a common interest in one cause or matter, one or more of such persons may sue or be sued or may be authorized by a judge to defend in such action on behalf of or for the benefit of all persons interested.

Since an action for damages has been held to be a claim against the trust fund or other property of the union, it is necessary to prove the existence of such fund of property.[3] Individual members of a trade union are, of course, liable for wrongs for which they are responsible. Only actions against all the members of a trade union as a society are considered here. It is unnecessary to discuss the nature of the acts that may render trade unions liable to civil proceedings under the common or statute law. The greatest controversy has occurred over the legality or illegality of a trade union's "interference" with an employer's business. The objects of trade unions are normally attained by means which may cause injury of some sort to employers or fellow-workmen by interfering with their trade or business. Where the line falls between what is lawful in the attempt to effect their purposes and what is unlawful interference with another is a matter for the Court in determining the circumstances of each case. In general, the House of Lords in *Sorrel v. Smith*[4] laid down the principle that a combination of two or more persons wilfully to injure a man in his trade is unlawful, and, if it results in damage to him, is actionable, If, however, the real purpose of the combination is not to injure another, but to advance or defend the interests of those in the combination, no wrong is

---

[1] *Vacher & Sons, Ltd. v. London Society of Compositors*, (1913) A.C. at p. 120.

[2] Under Article 81 of the Code of Civil Procedure of Quebec, no person may use the name of another to plead. For modification of this see under Professional Syndicates Act of Quebec, *infra*, p. 75.

[3] See quotation from Geldart, *supra*, p. 75.

[4] 1925, A.C. 700. This case did not involve a labour organization. As pointed out *supra*, p. 17, the Trade Disputes Act, 1906, put an end to actions in Britain for conspiracy to injure if based on acts done in contemplation or furtherance of a trade dispute.

done and no action will lie, even if damage to another results, so long as no illegal means are used.[1]

In Canada, since almost all trade unions are unregistered, they cannot properly be sued in their own names but only through representatives appointed to defend the action on behalf of all the members. The Courts have not always taken cognizance of this matter of procedure.[2] There has also been some difference of opinion as to the propriety of an action for damages against an unincorporated association as indicated in certain cases below. Where it is not possible to bring home to all the members of the union the authorization of the wrongful act giving cause for damages, an action could hardly be brought against certain persons as representing all the members.[3]

In a Quebec decision, confirmed by the Court of King's Bench, a trade union was held responsible for illegal picketing but the judge remarked that as the union had no property in Canada, a judgment for damages was useless.[4] This decision was followed in an action against the Joint Board of the Cloak and Suit Makers' Union of Montreal and damages of $200 were assessed against the union.[5] In both these cases, the defendant was an unincorporated association. In the first case, on appeal, it was urged that the appellant could not be properly made a defendant. Since this objection had not been raised either by preliminary plea or otherwise in the Court below, it was held that it could not later prevail in the appeal Court. In 1930, in a suit for damages against the Amalgamated Clothing Workers of America with headquarters in New York, the Quebec Court of King's Bench held that an unincorporated labour union could not be sued as a union and under Quebec law a representative action could not be brought.[6] This decision was confirmed by the Supreme Court of

---

[1]In this connection, see Kennedy, W. P. M. and Finkelman, J., *The Right to Trade, an Essay in the Law of Tort*, Toronto, 1933.

Actions in Canada for damages against trade unions in which the Court has referred to *Sorrell v. Smith* include: *Hay v. Local Union No. 25, Ontario Bricklayers and Masons International Union* (Ont.); *Schuberg v. Local 118, International Alliance of Theatrical Stage Employees* (B.C.); *Klein v. Jenoves and Varley* (Ont.) For references, see List of Cases.

Actions for damages prior to *Sorrell v. Smith* include: *Perrault v. Gauthier* (Quebec); *Le Roi Mining Company v. Rossland Miners' Union No. 38, Western Federation of Miners* (B.C.); *Krug Furniture Company v. Berlin Union of Amalgamated Woodworkers* (Ont.); *Graham v. Knott* (B.C.); *Metallic Roofing Co. v. José* (Ont.); *Cotter v. Osborne* (Man).; *Cumberland Coal and Railway Company v. McDougall* (N.S.); *Vulcan Iron Works v. Winnipeg Lodge, No. 174* (Man.); *Sleuter v. Scott* (B.C.); *Williams and Rees v. Local Union No. 1562, United Mine Workers of America* (Alberta); *B.C. Telephone Company v. Morrison* (B.C.); *Rother v. International Ladies' Garment Workers' Union* (Que.); *Robinson v. Adams* (Ont.); *Patzalek v. Adams* (Ont.).

[2]In some cases, the point has been brought to the attention of the Court and the action has failed on this ground or representatives have been named to defend the action on behalf of the union. In other cases, where defence did not plead that the union was not capable of being sued as a union, the case proceeded as if it were, e.g., *Krug Furniture Co. v. Berlin Union of Amalgamated Woodworkers*, (1903) 5. O.L.R. 463. In *Hay v. Local Union No. 25, Ontario Bricklayers and Masons International Union*, (1929) 35 O.W.N. 69, it was stated by the Court that the "union, being unincorporated, could not be sued, and therefore, the adding at the trial of the individual defendants was incompetent, it being in fact a substitution of defendants for an original defendant against whom no cause of action existed . . . . . and upon that ground alone the action against the individual defendants should be dismissed." The action was, however, tried on its merits. See also *Haiden v. Herr*, (1934) 1 D.L.R. 276, *infra*, p. 48.

[3]On this point, see *Hardie and Lane, Ltd. v. Chilton et al*, (1928) 1 K.B. 663, *infra* p. 39 in which it was held that there was no ground for saying that the members of the association had the same interest in the action (head- note), also *Walker v. Sur*, (1914) 2 K.B. 930. The latter action was against a religious society most of whose members resided abroad; the former was against a "trade union" of motor dealers and manufacturers. For discussion on representative actions against trade unions, prior to *Hardie and Lane* case, see Sophian, T. J., *Trade Union Law and Practice*, London, 1927, pp. 303-309; also E. K. Williams, K.C., Some Developments in the Law Relating to Voluntary Unincorporated Associations, *Proceedings of Canadian Bar Association, 1927*, at p.184.

[4]*Rother v. International Ladies' Garment Workers' Union*, (1921) Q.R. 60 S.C. 105; (1923) Q.R. 34 K.B. 69.

[5]*Bercovitch v. Joint Board of Cloak and Suit Makers' Union of Montreal*, (1923) C.A. 279. Not reported but text of judgment in *The Labour Gazette*, vol. 23, p. 635.

[6]*Society Brand Clothes Ltd. v. Amalgamated Clothing Workers of America*, (1930) Q.R. 48 K.B. 14. Article 81 of Code of Civil Procedure of Quebec stipulates that none may plead in the name of another.

Canada where it was stated by Cannon, J., that a Court should

> take notice that an aggregate voluntary body, though having a name, cannot appear in Court as a corporation when in reality not incorporated. . . We must accordingly reach the conclusion that, while under the prevailing policy, our legislation gives to unincorporated labour organizations a large measure of protection, they have no legal existence; they are not endowed with any distinct personality; they have no corporate entity; they constitute merely collectivities of persons. The acts of such an association are only the acts of its members. Therefore, it cannot appear before the Courts and its officers have no capacity to represent it before the tribunals of the Province of Quebec. . .[1]

In the other provinces where the rules of practice permit a representative action, suits against unions for damages have been successful in some cases. In an action in Winnipeg against certain officers and members of the plumbers' union, as representing the union, for conspiracy to injure the plaintiff and for picketing, the trial court in June, 1908, awarded $2,000 and costs against certain individual defendants and against those named to defend the action on behalf of the union. It declared that the property and assets

> of the said association in the hands of such defendants or any or either of them or in the hands of any other person or persons or body incorporate, in trust, or for the use of the said Local Union No. 62, or to which the said association or persons are beneficially entitled, are liable to satisfy the claim of the plaintiffs against the said representative defendants for damages and costs.[2]

The Manitoba Court of Appeal dismissed the appeal, holding that certain acts of the members of the union were unlawful and that there was sufficient evidence given at the trial to bring the wrongful acts home to the union as a body so as to make its funds and property liable to answer the damages.[3] Application was made to the Manitoba Court of Appeal for leave to appeal to the Privy Council without going to the Supreme Court of Canada. Before a decision was given on this point, a receiver was appointed on August 19, 1909, to receive and hold all dues payable to the union for the purpose of satisfying plaintiff's judgment. An application for an order to continue the receiver was refused by the same judge, however, a few weeks later on the ground that the chattel property was not of sufficient importance to justify the appointment of a receiver and the dues paid by the members were not based on a contract and their payment could not be enforced. Under these circumstances, the Court held that the receiver could not recover by action.[4] Leave to appeal to the Privy Council was finally granted by order in council but the time limit having expired, it was necessary to make application for special leave to appeal. This was refused by the Privy Council on February 15, 1910.[5] As a result of the proceedings in this case, the plumbers' union in Winnipeg surrendered its charter and disbanded, partly to free its members from the permanent injunction which had been issued against them.

---

[1](1931) 3 D.L.R. at p. 365 and 367 respectively.
[2]*Cotter v. Osborne*, C.R. (1911) A.C. at p. 147.
[3]Ibid., at p. 159.
[4]*The Labour Gazette*, vol. 10, pp. 401, 520.
[5]*The Voice*, Winnipeg, February 18, 1910; C.R. (1911) A.C. at p. 159.

In a suit brought against the machinists', iron moulders' and blacksmiths' unions in Winnipeg in 1906, judgment was given for the plaintiff for $500 and costs amounting to $5,000. The appeal by the defendant unions was dismissed by the Manitoba Court of Appeal.[1] A settlement was arrived at by the payment to the company early in 1913 of $5,000. This sum was made up by the local unions with help from the International Associations of which they were branches.[2]

In British Columbia, in 1914, an action was brought against the executive committee of the plasterers' union for conspiracy to injure the plaintiff in his trade by inducing employers not to employ him. The Court awarded the plaintiff the amount he would have earned in wages had it not been for interference of the union which had tried to discipline him for inferior work. The judgment was confirmed by the Court of Appeal.[3] In 1926, damages were awarded the plaintiff in a suit against the Vancouver local union of theatrical stage employees for loss to his business as a result of picketing by the union during a strike.[4] The amount of the damages—$1,750;—was paid into Court pending the result of the appeal to the Supreme Court of British Columbia. On an equal division of the Court, the appeal was dismissed and the damages and costs were paid to the former manager of the theatre, plaintiff in the action. The damages were made up by a levy of $100 on each member of the local union and costs were shared equally by the Vancouver Trades and Labour Council and the local union.[5]

In 1902, suit was brought by the Metallic Roofing Company of Toronto against a local union of sheet metal workers, the Amalgamated Sheet Metal Workers' International Association, and certain members of the local union for an injunction to restrain the defendants from interfering with the plaintiffs' business and for damages. On a motion by the defendant association to strike the name of the association from the writ on the ground that it was a voluntary association, it was held by the Ontario Court of Appeal in 1905 that an unincorporated, unregistered voluntary association not formed for any purpose of gain or profit like "Local Union No. 30, Amalgamated Sheet Metal Workers' International Association is an entity unknown to the law, and that its members cannot be sued by their adopted name." It was also held, however, that the plaintiffs could proceed against all the members of the trade union in a representative action.[6] On the question of jurisdiction as to the local union and the parent body, with headquarters in the United States, it had been held by MacMahon, J., on October 5, 1903, that the Court had jurisdiction as to the local union but not as to the parent body.[7] This order was appealed and in the above judgment of the Court of Appeal in January, 1905, it was held that there was jurisdiction as to both organizations. By a certificate of the judgment of the Court, it was

---

[1] *Vulcan Iron Works Company v. Winnipeg Lodge No. 174*, (1911) 21 M.R. 473, see also *infra*, p. 87-89.
[2] *The Labour Gazette*, vol. 13, pp. 1323, 1444.
[3] *Sleuter v. Scott* (1914) 6 W.W.R. 451; (1915) 8 W.W.R. 714.
[4] *Schuberg v. Local International Alliance of Theatrical Stage Employees et al*, (1926) 3 D.L.R. 166 and (1927) 2 D.L.R. 20. See *infra* p. 81.
[5] *The Labour Statesman*, Vancouver, January 7 and March 25, 1927, and letter from secretary, Local No. 118.
[6] *Metallic Roofing Company v. Local Union No. 30, Amalgamated Sheet Metal Workers' International Association*, C.R. (1909) A.C. 15.
[7] Ibid., at p. 10.

ordered that costs of the appeal from the order of MacMahon, J., were to be paid by the respondents to the appellants, that is, by the defendants to the plaintiffs.[1] The plaintiff company then obtained an order attaching all moneys deposited in a bank to the credit of the defendant union or of the individual defendants. On a motion for the payment by the garnishees of the sum admitted to be in the bank to the credit of the union, Cartwright, Master, held that the funds in question were not shown to be exigible to satisfy plaintiffs' execution for costs.[2] From this decision an appeal was taken and the decision was reversed by Anglin, J., who was of the opinion that the funds of the union were the joint property of all the members and were exigible for their debt to the plaintiffs.[3] On appeal to a divisional court, it was held, finally, that the debt for costs could not be satisfied by garnishee process attaching money to the credit of the union. Sir William Meredith, C.J., pointed out that the question was not whether the property of the union could be taken to satisfy a debt, but whether the money in the bank to the credit of all members could be taken to pay costs in a suit in which only certain members of the union were defendants, even if for the purposes of the action, which was still to be tried, these individual defendants were made representatives of the whole association.

> The members of the local union other than those named as defendants are not parties to the action; they are represented, no doubt, by the members who are defendants, and will be bound by whatever judgment may be ultimately pronounced as if they had been named as defendants, and, that being the case, the Court may be enabled to pronounce a judgment which will render the property of the local union answerable for the judgment debt and costs, if plaintiffs should succeed in the action. But where A, B, and C are defendants, and an order has been made that they shall represent all the other members of a class, an order that the defendants shall pay money, whether it be for damages or costs, without more, cannot be enforced by execution or process in the nature of execution, against the property of any one but A, B, and C; in other words an order that A, B, and C shall pay money cannot be treated as an order that they and the other members of a class for which they have been authorized to defend shall pay it.[4]

When the action against the representative defendants for conspiracy to injure the plaintiffs in their business by a strike and boycott was tried, the Metallic Roofing Company was given damages.[5] The Court directed

> that judgment be entered for the plaintiffs after thirty days for $7,500 with costs against the defendants individually and as representing all persons who on the 7th of August, 1902, constituted the association of persons known as Local Union No. 30, Amalgamated Sheet Metal Workers' International Association or Alliance and the Amalgamated Sheet Metal Workers' International Association or Alliance and declaring that the property and assets of the.....Local Union.....and the said..... International Association or Alliance in the hands of the said defendants

---

[1]Ibid., quoted at p. 27.
[2]Ibid., at p. 24.
[3]Ibid., at p. 26.
[4]Ibid., at p. 29 and *The Labour Gazette*, vol. 6, p. 228.
[5]*Metallic Roofing Company v. José*, C.R. (1909) A.C. at p. 30.

> or any or either of them, or in the hands of any other person or persons or body corporate, in trust or for the use of the said Local Union....or Association....are liable to satisfy the claim of the plaintiffs against the defendants in the action for damages and costs.

An appeal against this decision was dismissed by the Divisional Court on May 1, 1906.[1] A further appeal was dismissed by the Court of Appeal a year later. On the question of "the constitution of the suit and the results to follow from enforcing the judgment," one member of the Court, with whom the Chief Justice and two others concurred, stated:—

> The constitution of the action in so far as representation is concerned was long ago settled, finally, in this Court. And the fact, if it is a fact, that the plaintiffs may find difficulty in collecting their judgment, would be a poor reason for setting it aside. If in the course of the collection they take, under process, the goods of A to pay B's debt, as the learned counsel seemed to be apprehensive might be the case, A will have his remedy.[2]

On the same point, another member of the Court held that

> No valid objection has been made to that part of the judgment making the property of these unincorporated bodies answerable for the damages; the orders, duly made, by which all their members were made parties to the action, by their representatives, are not to be rendered futile; at the least their effect should be to make such property so answerable, when so adjudged.[3]

Following this decision, appeal was made to the Judicial Committee of the Privy Council which ordered the action to be re-tried on the ground that the jury had been misdirected by the trial judge as to what constituted an actionable wrong. The Judicial Committee did not suggest that the action was improperly constituted. As the parties arrived at a settlement on their own account, the case was dropped.[4]

It might be pointed out again that the Trade Disputes Act, 1906, was enacted in Britain while the *Metallic Roofing* case was before the Canadian Courts. By section 4 of that Act, the liability of a trade union in Britain to be sued in tort has been practically removed. It follows that English cases since 1906 involving the liability of voluntary associations are rarely actions against trade unions for tort.[5] Subsequent cases in Ontario appear to have settled definitely as far as that province is concerned the question as to the applicability of the rule regarding representation in action against trade unions for

---

[1]Ibid., at p. 34.
[2]Garrow, J., at p. 39.
[3]Meredith, J., at p. 43.
[4]At p. 43, also *The Labour Gazette*, vol. 9, p. 1018. The charge of the trial judge to the jury conveyed the impression in the opinion of the Judicial Committee, that the calling out of men on strike by resolutions of the unions, if the resolutions were the cause of the strike, was an actionable wrong without regard to motive and without regard to the conspiracy alleged.
[5]In *Vacher and Sons, Ltd., v. London Society of Compositors*, (1913) A.C. 107, it was held that the prohibition in s. 4 of the Trade Disputes Act of actions in respect of torts committed by or on behalf of them is general and not limited to acts in furtherance of a trade dispute. Under the Trade Union Act, s. 9, however, the trustees of a registered union may be sued with respect to the property of the union. In *Hardie and Lane, Ltd. v. Chilton*, (1928) 1 K.B. 663 it was held by the Court of Appeal that s. 4 of the Trade Disputes Act applies to trade unions generally and is not restricted to trade unions of "workmen or masters" so as to exclude an association of dealers or others whose object is "the imposing of restrictive conditions on the conduct of any trade or business," which is a statutory object under the Trade Union Acts. Prior to this decision, it appears to have been generally accepted that s. 4 of the Act applied only to labour organizations or employers' associations.

damages. In 1921, in *Barrett v. Harris,* which was not a trade union case, Middleton, J., in the Appellate Division of the Supreme Court of Ontario laid down the principle clearly and briefly that

> in an action to recover damages for a tort, the Rule (for the naming of representatives as defendants on behalf of an unincorporated society) cannot be invoked unless it is intended to be alleged that the unincorporated body is possessed of a trust fund and such circumstances exist as entitle the plaintiff to resort to that fund in satisfaction of his claim; in such case the trustees may be appointed to represent the members in defending the fund.[1]

This ruling was approved and followed by the Second Divisional Court of the Appellate Division in a case involving the Hamilton Motion Picture Projectionists' Local Union 303.[2] Since the union was not possessed of a trust fund, it was held that an order for representation should not be made and the union could not be sued.

In 1919, an action was brought in Alberta by two non-unionists to recover damages and loss of wages from a trade union which by refusal to admit them as members and by the threat of a strike, had brought about their dismissal from the job. When the case was appealed from the Alberta Appeal Court, Anglin, J., of the Supreme Court of Canada stated that injury to the plaintiffs had been proved but he was of the opinion that the six individuals named as representatives of the union in an amended statement of claim should not be held to be proper representatives.[3] Further, certain English decisions not involving labour organizations were cited[4] and his conclusion appears to be that the representation rule can hardly be applied to trade union cases.

> Many members of Local Union 1562 might have defences not open to the proposed representative defendants and there are many other reasons against applying the rule in cases of tort such as this.[5]

On the other hand, Idington, J., distinguished between the English cases referred to and that before the Court, stating that in his opinion

> the action of a representative character will still lie against an unincorporated union for wrongs such as complained of.[6]

Duff, J., on the same point:

> In order to prevent misconception, I ought to state, without passing any opinion upon the extent of the jurisdiction conferred by Rule 20 of the Alberta Rules (I need hardly say that I should hesitate before differing from the united opinion of Lord Macnaghten, Lord Lindley and Lord Dunedin) that this is not in my judgment a proper case for amendment.[7] . . .

It appears, then, that in the recent cases involving the liability of a trade union of which two were decided by the Supreme Court of Canada, one in 1919

---

[1](1921) 51 O.L.R. at p. 491. See in this case, review of *Metallic Roofing* case.
[2]*Robinson v. Adams,* (1924-25) 56 O.L.R. 217.
[3]*Williams* and *Rees v. Local Union No. 1562, United Mine Workers of America,* (1919) 59 S.C.R. 240.
[4]*Walker v. Sur,* (1914) 2 K.B. 930, action for debt for architect's fees against a religious society most of whose members resided abroad and which had no funds vested in trustees: *Mercantile Marine Service Association v. Toms* (1916) 2 K.B. 243, action for libel against Imperial Merchant Service Guild: and *London Association for Protection of Trade v. Greenlands Ltd.,* (1916) 2 A.C. 15, action for libel authorized by secretary.
[5]At p. 259.
[6]At p. 244.
[7]At p. 246.

and one in 1930, it was held in the former case that the individual defendants, sought to be added at the trial as representative defendants, were not considered proper representatives to defend the union. On the general question as to the propriety of representative actions against trade unions for tort, there seems to have been some difference of opinion among the four judges commenting on this point. On the one hand while Anglin, C. J., with whom Brodeur, J., agreed, did not definitely lay down a rule for general application, he appeared to incline to the view that a union could not be sued in a representative action. Idington, J., held definitely that it could and, while Duff, J., did not express an opinion on the point, he indicated that the dicta in the *Taff Vale* case would have considerable weight with him. In 1930, the case was a Quebec one and was decided according to Quebec law which makes no provision for representative actions. In Ontario, a representative action against a trade union was approved in 1924 on condition that the union possessed a trust fund to satisfy the claim and that the defendants properly represented the union. In other provinces, damages have been awarded against trade unions.[1] In England, where under the Trade Disputes Act, 1906, actions against trade unions for tort cannot now be entertained, the rule providing for representatives to defend a voluntary society is applied only after close scrutiny of the circumstances of each case. The nature of the action, the character of the association, the responsibility of the members for the tort, the existence of a common fund vested in trustees to meet the damages, and, finally, the naming of proper representatives, that is, persons having the same interest in the cause as the persons represented, all these matters call for consideration by the Court and determine the propriety or otherwise of a representative action.[2]

Right of Trade Unions to Sue

The above cases involve suits for damages for wrongs alleged to have been committed by trade unions and the principles that apply are, as we have noted,

---

[1] See *supra*, for Manitoba and British Columbia. For Nova Scotia, see *Cumberland Coal and Railway Co., v. McDougall* (1910) 44 N.S.R. 535.

[2] In *Hardie and Lane, Ltd. v. Chilton and others*, (1928) 1 K.B. 663, the Court of Appeal affirmed judgment of Fraser, J., in an action against an association of motor dealers and manufacturers, which was a trade union under the Trade Union Acts, for conspiracy, libel and return of money. Fraser, J., carefully reviewed cases, pointing out that in the case before him there were no trustees in whom the funds of the Association were vested, that the members of the Association were numerous and that there was no common interest in the cause as required by the Rule concerning representation. "The actual wrongdoers," he said, were "before the Court." In *R. v. Denyer*, (1926) 2 K.B. 258, the defendant, one of the defendants in *Hardie and Lane* case, was convicted under the Larceny Act of demanding money with menaces, his purpose being to enforce the price policy of the Motor Trade Association of which he was an officer. Following the conviction which was later sustained by the Court of Criminal Appeal, Hardie and Lane, Ltd., refused to pay money demanded of them by the Motor Trade Association and brought action against certain officers, among them Chilton and Denyer, to recover what they had already paid. Thus arose the case, *Hardie and Lane Ltd. v. Chilton*. On appeal from the judgment of Fraser, J. in the latter case, the claims for libel and return of money were abandoned leaving only the claim for conspiracy. It was pointed out by the Court of Appeal that the membership of the Association was constantly shifting and that one of the rules of the Association exempted members from liability for the acts of other members and of the officials. It was held that there was no ground for saying that the members of the Association had the same interest in the action or the defence to it. Moreover, the action was prohibited under the Trade Disputes Act. In the action against the individual defendants before Avory, J., and jury, verdict was given for the plaintiffs, the judge's charge to the jury being based on the decision of the Court of Criminal Appeal. This judgment was reversed by the Court of Appeal, (1928) 2 K.B. 306, which, however, has no authority over the Court of Criminal Appeal. The latter is a final court of appeal in criminal cases subject only to an appeal to the House of Lords on the certificate of the Attorney-General. (1928) 165 Law Times 370.

similar to those that apply to other unincorporated societies. A difference appears when a trade union is the wronged party and wishes to take action against others either for tort or for breach of contract. For, in the case of trade unions whose rules provide for the massing of strike and benefit funds, or for fining and expelling members for breach of the rules regulating strikes and employment, to the general character of a voluntary society must be added the particular character of a society whose main objects are in restraint of trade and therefore unlawful at common law in the sense that it has been deemed against public policy to lend the assistance of the law to further such purposes. As the Canadian Trade Unions Act, 1872, applies only to unions registered under its provisions and as only some dozen unions are registered, this statute has no effect on the legal position of most Canadian trade unions and they appear to be in substance voluntary societies but unlawful as being in unreasonable restraint of trade[1]. Except that they are no longer criminal as conspiracies in restraint of trade, their legal position would seem to be that of trade unions in England prior to 1871, unlawful societies in the sense that they were unable to claim the assistance of the Courts, their agreements and trusts unenforceable since they could not sue or be sued with respect to contract, neither could they sue in tort.

It appears to be only in recent years that unincorporated trade unions in Canada have sought the aid of the Courts in actions in tort or for breach of contract with the result that the application of the doctrine of restraint of trade to labour organizations in civil actions has come with somewhat of a surprise to a public unfamiliar with this aspect of English law. As we have seen, certain cases have come before the Courts involving the agreements between a union and its members and the Courts have dealt with these actions as with those instituted by any other voluntary association.[2] The character of the union at common law did not come before the Court. Of course, not all trade unions have rules for fining and expelling members for accepting or leaving employment contrary to the rules of the union or for massing strike and benefit funds in one defensive fund or for other purposes which were deemed by the Courts in Britain so to interfere with "the free course of trade" that it was considered against "public policy," or against the "policy of the law,"[3] to aid such associations in furthering their objects by enforcing their agreements. A few trade unions are little more than friendly societies. Their purposes would not bring them within the law on restraint of trade. In general, however, it has been held in Britain that the

---

[1]The majority of Canadian trade unions are branches of trade unions having headquarters in the United States. Only one of these is registered under the Trade Unions Act. In 1872, when the Trade Unions Act was passed only one or two unions, e.g., the Typographical, had become branches of the central union with head office in the United States. A few unions in Canada are incorporated by private Act or under Companies Acts. A few local unions are registered under the Insurance Acts. The special rights and liabilities arising from such incorporation or registration are not dealt with in this bulletin. But it might be observed that a union registered under the Ontario Insurance Act (R.S. 1914, c. 183) is a legal entity capable of being sued, *Pepper v. Ottawa Typographical Union No. 102*, (1906) 8 O.L.R. 409, 445, and *Amalgamated Society of Carpenters and Joiners v. Sinclair et al* (1925) 2 D.L.R. 774. In connection with the latter case, see comment in *Sellors v. Woodruff* (1925) 57 O.L.R. at p. 587. Since 1926, trade unions have not been entitled to be licensed under the Ontario Insurance Act. The Trade Unions Act, 1872, stipulates that "no act in force in Canada providing for the constitution and incorporation of charitable, benevolent or provident institutions shall include or apply to trade unions," (s.5), but the Act does not apply to any trade union not registered under it.

[2]See *Morrison v. Ingles*, *supra*, p. 26.

[3]This expression was used by Lord Truro in *Egerton* v. *Brownlow* (1853) 4 H.C.L., at p. 195, as an alternative to the term, "public policy" and has been repeated by some writers. For criticism of it, see Knight, W. S. M., Public Policy in English Law (1922) 38 *Law Quarterly Review*, 207.

main objects for which most trade unions are organized are in "unreasonable" restraint of trade. They were, therefore, unlawful under the common law and the agreements or rules relating to benefit funds are so inseparable from these objects as to be affected by their illegality.[1] As we have seen, the Trade Union Act, 1871, conferred a limited legality on trade unions, leaving certain agreements only to be dealt with under the common law. Under the Trade Union Act, indeed, these particular agreements are no longer void as they were under the common law but are capable of having a legal standing. They are merely not directly enforceable.[2] The "unlawfulness" of such agreements consists, as pointed out above, not in the contravention of any law but in their enforcement being contrary to "public policy".

> Public policy must necessarily be a variable quantity, and it does not admit of precise definition. This feature is not without its value since it secures a certain amount of elasticity in the growth of the law, whilst at the same time there has been no manifest discontinuity in the development of general principles.[3]

For an agreement to be contrary to public policy it need not be contrary to the interest of the general public. Nor does it necessarily follow that any stigma attaches to an agreement or to an association based on agreements which are against public policy because they are in restraint of trade whether they be agreements between individuals or agreements between members of a labour organization or of an association of employers or of traders.

> Precisely the same act may in one aspect be against public policy and void and in other aspects it may be in conformity with public policy and not illegal... public policy which embraces the interest of all may be in direct conflict with public policy which covers the interests of certain sections of the community.[4]

In the case of trade unions, the validity conferred on their agreements and trusts in general and the sanction given by the law to the strike, the most extreme of trade union weapons, under the Acts of the United Kingdom in 1871, 1906, 1913 and 1927 manifest the friendly attitude of the law towards them. The agreements which under the British Trade Union Act are not directly enforceable are an essential part of a union's operation but a part that has appeared wise to leave to the control of the union. As Frederic Harrison wrote in the minority report of the Royal Commission of Trade Unions in 1869,—

> Trades unions are essentially clubs and not trading companies, and we think that the degree of regulation possible in the case of the latter is not possible in the case of the former. All questions of crime apart, the objects at which they aim, the rights which they claim, and the liabilities which they incur, are for the most part, it seems to us, such as courts of law

---

[1] *Russell v. Amalgamated Society of Carpenters and Joiners*, (1912) A.C. 421.

[2] Pollock, *Principles of Contract*, London, 1921, at p. 723. Pickford, L. J. in *Evans v. Heathcote*, (1918) 1 K. B. at p. 427: ". . . . . A contract made by a trade union in restraint of trade is no longer a void contract upon which no valid claim can arise, although that claim cannot be directly enforced."

[3] Hedges, R. Y., *Law Relating to Restraint of Trade*, London, 1932, p. 2.

[4] Winfield, P. H., Public Policy in English Common Law (lecture delivered at the University of London), (1929) 42 *Harvard Law Review* at p. 93. There is no statutory law in Britain dealing with agreements or combinations in restraint of trade except the Trade Union Act. Where the restraint is "unreasonable" as between the parties or injurious to the public as determined by the Court it will not be enforced. In Canada, s. 498 of the Criminal Code and the Combines Investigation Act of 1923, impose penalties on members of combinations operating or likely to operate to the detriment of the public. From this legislation combinations of workmen "for their own reasonable protection" are excepted, *supra*, p. 24, footnote.

> should neither enforce nor modify, nor annul. They should rest entirely on consent. We think the right course is, that they should be left to that spontaneous activity which produced them, and that the state cannot with policy interfere to give them a permanent or systematic character. They differ, however, from clubs in the fact that from their quasi-mercantile character, and the sphere of their operations, they suffer severely from the want of bare legal recognition.[1]

The means adopted to this end have been the maintenance in the Act of 1871 of the principle of judicial non-intervention in the matter of the agreements governing the members of the union, by adherence, in respect of these agreements, to the common law doctrine of restraint of trade.

> Had it (the Legislature) gone further and altogether excluded the application of the common law doctrine in this connection, the courts would have been compelled to give full effect by decree, or injunction, to contracts whereby workmen had bound themselves not to undertake certain legitimate kinds of work, and to refrain, under certain circumstances, from working at their trade at all, except by leave of their union, no matter what their immediate necessities might be.[2]

At this point, it is important to bear in mind the difference between the present legal position of trade unions in Canada and trade unions in Britain with respect to breaches of contract and actions by unions against others for wrong. As we have seen, the common law relating to restraint of trade in its application to trade unions has been affected by legislation in both countries. A trade union in Canada which is registered under the Trade Unions Act has the same rights in these matters as a registered trade union in Britain.[3] The agreements and trusts of neither a registered nor an unregistered union in Britain are void or voidable merely on the ground that the purposes of the trade union are in restraint of trade. In Canada, only the agreements and trusts of registered unions are made valid by the Act. In both countries the trustees of a registered union may bring and defend actions with regard to the property of the union in the name of the union. And so, in fact, since only a few unions in Canada are registered, most Canadian unions, under a strict interpretation of the law as it stands, cannot enforce agreements with their members or protect their funds or other property through recourse to the Courts under the Trade Unions Act. An unregistered union has no legal personality; it cannot bring an action in its own name. If it is in restraint of trade, its agents cannot, under the common law, seek the aid of the Courts. Almost all trade unions in Canada, then, appear to be in this position: they have no legal

---

[1] P. lix.

[2] Lord Robson in *Russell v. Amalgamated Society of Carpenters and Joiners* (1912) A.C. at p. 441. In a recent article the following comment occurs:

"Another recent consequence of the system of case-law has been, oddly enough, a failure in that very elasticity which is commonly and often rightly claimed by the supporters of the system as its major merit. Whilst case-law has at times permitted our system to adjust itself slowly to changes in public opinion, some branches of the law are at present suffering from a legacy of eighteenth and early nineteenth century economics, ill adapted to cope with latter-day problems. For example, the law of conspiracy, hampered by its own history, has combined with the old-fashioned economics of "restraint of trade" to form a most inadequate foundation for the slow and painful construction of trade union law as it stands today." Pritt, D. N., Essays in Law Reform, *The Political Quarterly*, London, April-June, 1933.

[3] In some cases, the Trade Union Act, 1876, and subsequent trade union legislation in Britain would make further differences but the above statement is true, in general, and is made with reference only to the effect of the principal Act in Britain.

personality and they are unlawful as being in "unreasonable" restraint of trade. In Britain, the majority of trade unions are statutory entities under the Trade Union Act and no trade unions are unlawful, merely because they are in restraint of trade, to such an extent that their agreements and trusts will not be enforced although the enumerated agreements remain unenforceable.

The first important case[1] in Canada in which these points were dealt with appears to have been an action brought in the Manitoba Court of King's Bench on behalf of the Brotherhood of Locomotive Engineers, a trade union with headquarters in the United States, and its General Committee of Adjustment on the Canadian National Railways, for an accounting and payment of moneys received by the defendant as former secretary-treasurer of the General Committee of Adjustment.[2] As to the accounts, the Court found that all the moneys paid to the defendant had not been paid out and that after the removal of the defendant from office he had paid from the plaintiffs' funds certain sums to aid in establishing a rival union. But the plaintiffs' right to sue called for consideration as well as the merits of the claim. Galt, J., remarked:

> I know of no case in the Canadian Courts defining the respective rights of a registered and non-registered trade union. The English decisions are almost our only guide. The subject is full of complexity, and I can see no escape from the necessity of tracing up the history of trade unions and the laws applicable to them, both in England and in Canada.[3]

After reviewing English decisions and the Trade Unions Act of Canada, he came to the conclusion that it was necessary to determine whether the rules of the Brotherhood of Locomotive Engineers were likely to operate in restraint of trade. If they were not, the law was open to the members for the purpose of enforcing contractual rights and trusts. If the purposes of the union were in restraint of trade, the members, as such, were "incapacitated from enforcing any legal rights." Following an analysis of the constitution and rules of the union, which include provision for the expulsion of members who take the place of strikers, prevent an expelled member from joining the railway firemen's union, prohibit a member entering into a contract of service without the consent of the General Committee, and impose penalties for violation of these rules, Galt, J., considered that he could not

> resist the conclusion that the provisions in the constitution and ritual of the plaintiffs relating to strikes, are open, under the Canadian law, to the same objections as were the rules of the respondent in *Russell v. Amalgamated Society of Carpenters and Joiners*. They are in direct restraint of trade and render the plaintiffs an unlawful trade union to the extent of preventing them from enforcing rights in a Court of law. It is unnecessary to decide whether, or to what extent, they could have enforced their claim against the

---

[1]But in *Cresswell v. Hyttenrauch* (1903) O. W. R. 655, a motion to continue injunction to restrain London Musical Protective Association from excluding plaintiff from association, McMahon, J. stated:

> It was urged upon the argument that the London Musical Protective Association was an illegal organization, and plaintiff being a member thereof, the Court would not assist him by enforcing an agreement made by him with the association, and that the injunction should be dissolved. Some of the rules of the association smack of "trades unionism" and may make it an illegal organization . . . . . I express no opinion, however, on this point, it not being desirable to provoke an appeal, when all the questions in issue can be disposed of at the trial.

See also *Parker v. Toronto Musical Protective Association* (1900) 32 O. R. 305.

[2]*Chase v. Starr* (1923) 1 W. W. R. 1393.

[3]At p. 1396.

defendant if they had registered their organization under the Trade Unions Act.[1]

As the *Russell* case[2] is a leading one in trade union law, the main points will be outlined here. The action by a widow as the representative of her husband, who had been a member of the Amalgamated Society of Carpenters and Joiners, was for sums alleged to be due under the rules of the union providing for sickness and superannuation benefits to its members. The union had refused to continue to pay sick benefits after a certain period. The provident funds of the society were for the benefit of its members as set out in the rules but they were one with its strike funds and the society was primarily a trade union, not a friendly society.

> The massing of funds has been considered by trade unions to be of vital importance, to conduce to their effectiveness in action, and to be justified by sound general policy.[3]

As the union was registered under the Trade Union Act, 1871, all the provisions of that Act applied and among them section 4 declaring that the Act shall not enable any Court to entertain any legal proceeding instituted with the object of directly enforcing any agreement "for the application of the funds of a trade union.....to provide benefit to members." That is, if such an agreement could be enforced before the Act was passed, it could still be enforced, but if it could not be enforced before 1871 because the union which had made the agreement was in unreasonable restraint of trade, the Courts were directly prohibited from enforcing it after 1871. The trial court, Court of Appeal and the House of Lords found in the *Russell* case that the union was

> an illegal association at common law as its main purposes were in unreasonable restraint of trade and the rules relating to those purposes were not severable from the rules relating to its provident purposes.[4]

The decision of Galt, J., in *Chase v. Starr* was to the effect that a trade union in Canada whose main purposes are in restraint of trade and which is not registered under the Trade Unions Act cannot have recourse to the Courts for any purpose. This decision is in agreement with the decisions in England before 1871 when trade unions were unable to protect their funds—a condition which the Trade Union Act of that year was designed to remedy.[5] It is in line, also with recent judgments in Britain in which it is pointed out that, but for the Trade Union Act, 1871, trade unions with rules for restraining trade are unlawful at common law to the extent that their agreements and trusts are unenforceable.[6]

When the Brotherhood of Locomotive Engineers appealed the decision of the trial judge, the judgment of the Manitoba Court of Appeal was to the effect that

> it should not be held, in the present condition of the law, that the union in question is an organization so tainted with illegality that the Court will not lend its assistance to recover the moneys in question.[7]

---

[1] At p. 1408.
[2] (1912) A. C. 421.
[3] Lord Shaw, at p. 436.
[4] Headnote, 421.
[5] *Hornby v. Close*, (1867) 2 Q.B. 153; *Farrer v. Close*, (1869) 4 Q.B. 602, *supra* p. 13.
[6] See *Braithwaite v. Amalgamated Society of Carpenters*, (1922) 2 A.C. 440, and *Cox v. National Union of Foundry Workers* (1928) 44 T. L. R. 345.
[7] (1923) 3 W.W.R. 500, headnote, (Perdue, C. J.).

The Chief Justice suggested that Section 32 of the Trade Unions Act applied to unions whether registered or not. This is the section declaring that members of a trade union shall not be liable to criminal prosecution for conspiracy or otherwise or its agreements or trusts be rendered void or voidable merely on the ground that the purposes of the union are in restraint of trade. As pointed out earlier in this Bulletin, the first part of this section was embodied in the Criminal Code in 1892. Perdue, C. J., observes—

> It will be noticed that the last two lines of sec. 32 of the Trade Unions Act are omitted from the section as it appears in The Criminal Code. The compilers of The Code were dealing with the question from the standpoint of criminal law only, and were not called upon to declare the consequences to civil rights. But it is obvious that if the purposes of a trade union are not unlawful *merely* because they are in restraint of trade, the common-law ban of illegality has been removed, so that an agreement or trust would not on that ground be void or voidable and might be enforced in the civil Courts.[1]

After reference to the sections of the Criminal Code dealing with trade unions and conspiracy, the Dominion Industrial Disputes Investigation Act and the Manitoba Industrial Conditions Act, 1919, he remarked:

> I only refer to them in this connection as indicating the desire of the Legislature to recognize, in so far as it may, the legality of trade organizations or unions, whether of employers or employees, for any purposes not forbidden by law, and the right of collective bargaining.[2]

The other members of the Court appear to have based their decision to allow the appeal on the " public policy " of Manitoba as manifested in the Dominion and provincial statutes referred to by the Chief Justice. It was pointed out, also, that in the absence of any plea of illegality by the union or evidence to meet such plea, the Court may only take cognizance of illegality when it is so obvious as to preclude any possible hope of overcoming it. The rules of the union in this case appeared to the Court not to be upon their face unreasonably in restraint of trade and contrary to public policy.

> Rules such as these, may well have been considered to be unreasonably in restraint of trade and contrary to public policy some years ago in Canada, and even at the present day in England. But care must be taken to consider the effect of recent legislation when determining what is now public policy in respect to the operations of associations of this kind, in respect to lawful and unlawful strikes, and in respect to collective bargaining, all of which are referred to in the statutes, Dominion and provincial, which I have quoted.[3] . . .
>
> The duty imposed on this Court in dealing with the legality of the trade union whose constitution and rules are under consideration, is to give effect to the principles laid down by the Judicial Committee of the Privy Council in *Attorney-General for Australia v. Adelaide ss. Co., Ltd., supra*, and by the House of Lords in the *Nordenfelt Case supra,*[4] defining restraint of trade. These principles, in so far as they refer to the public

[1] At p. 512.
[2] At p. 513.
[3] Dennistoun, J., at p. 527.
[4] (1913) A.C. 781 and (1894) A.C. 35 respectively. The former case involved agreements between coal mining companies and shipping firms alleged to be in violation of the Australian Industries Preservation Act. The second case arose from an alleged breach of covenant not to engage in the manufacture of guns or ammunition for a specified period of years.

interest, undoubtedly require that the question shall be dealt with from the point of view of Canadian public interest rather than that of Great Britain, which alone was under consideration by the English Courts in their application of the doctrine of restraint of trade to British trade societies. The decision as to what is or is not in the public interest is entirely distinct from public policy. The one is a question of fact (here controlled by law); the other is a matter of legal principle arrived at and formulated after an examination of the public interest in a field for which there is no legal precedent.[1] . . .

The public interest or well-being in relation to the matter before me can be determined by no more authentic or authoritative method than by reference to the laws enacted by the Dominion and provincial Legislatures.[2]

One member of the Court of Appeal dissented from the judgment concurred in by the other four and agreed with the decision of the trial Judge, while pointing out that under English law the action would be maintainable.

In my view neither our Trade Unions Act nor the sections of The Criminal Code referred to afford any help to the plaintiffs. Whether their union is an unlawful association or not must depend upon the common law. Whether or not a trade union is unlawful or not at common law depends upon the construction of its rules and the question is whether the objects of the union, as evidenced by its rules, involve an illegal restraint of trade. . . . Under the authorities, I think I am compelled to hold that many of these rules are in restraint of trade and render the plaintiff union an unlawful association in the sense that the Courts can render it no assistance.[3]

On appeal to the Supreme Court of Canada, the case was decided in favour of the union.[4] One member of the Supreme Court expressed no opinion other than that the appeal should be dismissed, another agreed with Galt, J. The other two members held

that, though some of the purposes of the union may be illegal as being in restraint of trade, the union is not thereby deprived of its right to hold a beneficial interest in the funds and to invoke the aid of the courts for its protection.[5]

Duff, J., who dealt with the case at length stated:—

On the ground, therefore, that this fund is not applicable to any of the illegal purposes of the Brotherhood, if there be such illegal purposes, the respondents would seem to be entitled to the protection of their property by legal process.

But I think their title to such protection may be put on a broader ground. If the Secretary-Treasurer were not a member of the Brotherhood, if he were a depositary whose duties arose from the acceptance of the custody of the fund simply, and not from any provision in the rules of the Brotherhood, the case would seem to be abundantly clear. Is it really less so because the Secretary-Treasurer is a member, a party to the agreements of the constitution and because his duties are defined by the constitution? As regards this fund, his duty is merely that of a custodian. Is there any real difficulty in holding, either that those parts of the rules which make him the custodian and require him to deal with the fund in his hands

[1]Trueman, J., at p. 539.
[2]Ibid., at p. 549.
[3]Fullerton, J. at p. 515.
[4](1924) 66 S. C. R. 495.
[5]Headnote. (Duff and Malouin, JJ.)

according to the orders of the General Committee of Adjustment and to hand it over to his successor are capable of separation from the mass of rules, so that they are not affected by nullity attaching to such agreements as may be considered illegal on the ground that they constitute an unreasonable restraint of trade or that the policy of the law which forbids the enforcement of such agreements is not so wide as to forbid the recognition of the interest of the members of the society in the fund and the protection of that interest by legal process? May one not say that at this point one encounters a paramount policy which has to do with the protection of the owners of property against the defalcations of dishonest custodians? My conclusion is that since the Act of 1869, 32-33 Vict., ch. 61 (even before the Trades Union Act of 1871), such an action as this has been maintainable in England; and consequently that the right to maintain the action was recognized under the law of England, which was introduced into Manitoba in 1870.[1] . . .

The question is of great importance in Canada, because of the peculiar condition of trade union law in this country. The Canadian Act, which is ch. 125 of the Revised Statutes of Canada, 1906, has not been adopted by the provinces, and as to many of its provisions there is, to say the least, doubt as to the authority of the Dominion to enact them. Section 32, for example, in providing that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render void or voidable any agreement or trust, is, *prima facie*, dealing with the subject of civil rights and property. No doubt the declaration that trade unions, whose purposes are in unlawful restraint of trade, are not, on that ground, to be regarded as criminal conspiracies, coupled with declarations on the subject contained in the Criminal Code which have been cited to us, established beyond question, if there ever was a doubt upon the subject, that such a society as the Brotherhood of Locomotive Engineers is not a criminal society. But these declarations do not carry us beyond the point reached by the declaration in the first section of the Act of 1869 above mentioned. If the appellant's contention is sound, it is highly probable that every trade union in Canada is, as regards the security of its funds, largely at the mercy of the officials who have the custody of them.

This would indeed be an extraordinary thing. Provincial and Dominion statutes for the past fifteen or twenty years have been directed to the encouragement of what is called "collective bargaining." Associations of employers, as well as associations of employees, must, if "collective bargaining" is to be effectual and bargains are to be carried out, have rules giving authority to discipline recalcitrant members; and must have funds; and most trade unions have rules vesting in some body authority to give a final decision upon the question of a strike or no strike, a fact which the Industrial Disputes Act, 6-7 Edw. VII, c. 26, sec. 15, explicitly recognizes. It would be singular indeed if the rights of the members of such associations in the funds provided for defraying expenses and salaries of officers, were left with no legal protection except that which arises from the liability to criminal prosecution. My conclusion, for the reasons given, is that the action is maintainable.[2]

The final decision in this case, then, rested partly on an analysis of the rules of the Brotherhood of Locomotive Engineers which appeared, in the opinion of some members of the Court, not to be so in restraint of trade that the law

[1] At p. 504.
[2] At p. 507.

would not assist the union in recovering its funds, and, partly, on the finding that the Trades Union Funds Protection Act passed by the Parliament of the United Kingdom in 1869[1] to enable trade unions to recover funds from defaulting officers is in force in the Province of Manitoba. It was by a curious turn of fortune that such an action as *Chase v. Starr* should have been brought in the Manitoba Courts, for only in that province and in Saskatchewan and Alberta could the Trades Union Funds Protection Act have had any effect. On July 15, 1870, when the Province of Manitoba was established, the law of England, as it was at that date, became the law of Manitoba and of the then Northwest Territories. In the case of Manitoba, it could be repealed thereafter only by the new provincial Legislature. So the Trades Union Funds Protection Act became part of the law of the Province of Manitoba although it is quite improbable that there were any trade unions in Manitoba at that time.

Not only was the common law on restraint of trade a barrier in the way of trade unions taking civil proceedings against others for tort in England before 1871, but it prevented trade unions suing or being sued for breach of contract. Under the Trade Union Act of the United Kingdom this disability was removed. The agreements and trusts of all trade unions were rendered enforceable. Further, a registered union was enabled to sue or be sued in its own name with respect to its property. As pointed out earlier in this article, the Act did not affect the position at common law of certain classes of agreements specified in the Act but left such agreements to the control of the union. No Court could entertain any action with a view to directly enforcing or recovering damages for the breach of the enumerated agreements. Among the agreements specified were those for the payment of benefits to members of a trade union. The Canadian Trade Unions Act made similar provision but limited the validity conferred on agreements and trusts to those of registered unions.

In recent years, two actions have been brought in Manitoba for the payment of benefits alleged to be due in accordance with the rules of the trade unions concerned. In neither case was the status of the union at common law considered. Since the unions were not registered, the Trade Unions Act did not apply and even if they had been registered, the legal status of the rules or agreements providing for benefits would not have been affected by that Act. The first action failed since the Court of Appeal found that the right to benefit had been forfeited by failure to comply with the rules.[2] In the second case, the judgment of the trial judge dismissing the action as constituted was confirmed by the Court of Appeal.[3]

Except *Chase v. Starr*, the only Canadian case in which the relation of trade unions to the common law on restraint of trade was considered, was one tried in the High Court of Ontario before Raney, J. in 1928.[4] The action was brought on behalf of the International Ladies' Garment Workers' Union against the Toronto Cloak Manufacturers' Protective Association, an incorporated

---

[1]See p. 13 *Supra*.
[2]*Hniden v. Herr* (1932) 1 D.L.R. 276.
[3]*Timmons v. Order of Railroad Telegraphers* (1932) 3 W.W.R. 312.
[4]*Polakoff v. Winters Garment Co.* (1928) 62 O.L.R. 40.

society of which the Winters Garment Company was a member, to enforce, in the words of Raney, J.,

> an agreement in writing in the nature of a collective bargain, made in February, 1925, by way of settlement of disputes between the local manufacturers and the local unions. It is the first action of the kind in this province, and I have not been referred to any precedent in the English courts.[1] Many defences are raised, the principal of which, as it seems to me, are:—
>
> 1. That the International Ladies' Garment Workers' Union is an unlawful association whose purposes are in unreasonable restraint of trade, and that therefore the courts will not assist it to enforce its contracts.
>
> 2. That the contract is itself in unreasonable restraint of trade and hence unenforceable in the courts.
>
> These defences raise questions of capital and far-reaching importance and of great difficulty. They involve the whole question of the legal status of trade unions in this Province, and perhaps in Canada as a whole, including the question whether under the law as it stands to-day a labour union can even maintain an action in our courts against an official who has embezzled its funds. That was the question in *Starr v. Chase*, in which Mr. Justice Duff remarked that if the appellant's contention was sound it was highly probable that "every trade union in Canada is, as regards the security of its funds, largely at the mercy of the officials who have the custody of them. . . ."
>
> Seeking a way of escape from so palpable a miscarriage of justice [as Justice Galt's decision in *Chase v. Starr*], the Manitoba Court of Appeal reviewed the history of the common law doctrine, as applied to labour unions, that combinations and contracts in unreasonable restraint of trade are against public policy, and therefore, in a civil sense, unlawful. A majority of the Manitoba Judges found in the books ample authority for the proposition that public policy with reference to the restraint of trade, as that doctrine had been applied to labour unions, is a vague and variable quantity, without fixed rules to determine what it is, and that at all events the public policy of the *Russell* case was not the public policy of Manitoba. In arriving at this view they were assisted by pronouncements of eminent English Judges. And the Manitoba Judges went farther. They found that public policy in Manitoba clearly supported the formation of associations in the nature of trade unions.
>
> In the Supreme Court of Canada a majority of the Judges were able to find grounds to support the judgment of the Manitoba Court of Appeal without reviewing the reasons of the Manitoba Judges.[2]

After reviewing decisions of the English Courts and the statute law in Canada, Raney, J., makes the following statement:

> Then to return to the common law of England, it must be abundantly clear that that law as declared by the House of Lords in *Russell v. Amalgamated Society of Carpenters and Joiners* is the rule of law governing Ontario. The majority of the Judges of the Manitoba Court of Appeal in *Chase v. Starr* had no difficulty in discovering ample evidence in the statutes of Canada and of Manitoba that public policy in Manitoba, at all events, did not call for the condemnation of the Brotherhood of Locomotive Engineers as an unlawful society, as Mr. Justice Galt had found himself required to do by the rule of law laid down by the House of Lords. In support of their view as to the public policy of Canada, as approved

[1] See p. 52 *infra*.
[2] At p. 41.

by the Parliament of Canada, they might have gone farther; they might have cited the labour clauses of the Covenant of the League of Nations. . .

The Covenant of the League of Nations was ratified by the Parliament of Canada, and so the labour sections of it became an expression of Canadian public policy.

But, granting the proposition that public policy in Ontario is contrary to the public policy that had the sanction of the House of Lords in the *Russell* case, have I the power, sitting at the trial of an action—indeed has any court in Canada the power—to declare a public policy on this subject different from the public policy declared by the House of Lords? I have no doubt that I, at all events, have no such authority.

In *Robins v. National Trust Co.*, (1927) A.C. 515, the Judicial Committee of the Privy Council pointed out that "when an appellate court in a colony which is regulated by English law differs from an appellate court in England, it is not right to assume that the colonial court is wrong. It is otherwise if the authority in England is that of the House of Lords. That is the supreme tribunal to settle English law, and that being settled, the colonial court, which is bound by English law, is bound to follow it. Equally, of course, the point of difference may be settled so far as the colonial court is concerned by a judgment of this Board."

Indeed the House of Lords itself has no authority to reverse itself. Speaking for their Lordships, in *London Tramways Co. v. London County Council*, (1898) A.C. 375, the Earl of Halsbury, L.C., said (p. 381) that "a decision of this House upon a question of law is conclusive, and that nothing but an Act of Parliament can set right that which is alleged to be wrong in a judgment of this House." That being so, if the public policy of Ontario differs from the rule of law as to public policy as laid down in the *Russell* case, how is the rule of law for Ontario to be changed so as to make it conform to Ontario public policy?

By conventions of both the British and the Canadian constitutions, recently re-affirmed,[1] the British Parliament has no authority to make laws either for Canada or for Ontario. And by the British North America Act the Parliament of Canada has no authority to make laws for Ontario in respect of property and civil rights, which a law respecting the civil rights of trade unions would obviously be. Therefore the only recourse of the labour unions of Canada that are under the ban of the common law doctrine of restraint of trade is to the provincial legislatures.

Then the only other question for me to answer is this: Are the rules and practices of the International Ladies' Garment Workers' Union and its collective bargain with the Toronto Cloak Manufacturers' Protective Association within the rule of law which I have found to be the law of Ontario?

I was at pains to state at length the "principles for regulating labour conditions" which had the approval of the Parliament of Canada when it became a party to the Covenant of the League of Nations, because those principles are, as I understand it, substantially the principles of labour unionism, including those of the International Ladies' Garment Workers' Union. But it is said by the defendants that, granted the worthiness of the principles, the methods used by the plaintiff union are illegal as being in unreasonable restraint of trade within the prohibition of the common law rule of public policy. And so it becomes necessary to examine the rules and practices of the plaintiffs. . . .[2]

---

[1] In *Report of the Imperial Conference of 1926*, later confirmed by the Statute of Westminster, 1931.
[2] At. p. 54.

I am not called upon at present to express any opinion as to the propriety or otherwise of these clauses extracted from the plaintiff union's agreement with the defendant association. I express no opinion as to whether they contravene public policy in this Province. That is a question for the Legislature. The question for me to answer is whether they contravene the rule of law laid down by the House of Lords in the *Russell* case.

As I read the reasons for judgment in the Court of Appeal and the House of Lords in that case, the rules of the Amalgamated Society of Carpenters and Joiners which they condemned were certainly not in restraint of trade to a greater degree than the rules and the clauses of the agreement from which I have quoted, and no useful purpose would be served by a closer analysis of the rules of the plaintiff union and of the agreement in question in comparison with the rules of the Amalgamated Society of Carpenters and Joiners. As I understand the judgments, the basis of the condemnation that the English Courts have visited on English trade unionism is to be found mainly in the discipline and restrictions of conduct to which members of the unions are required to give their assent. It must, of course, be quite obvious that without the strike as a weapon and without the discipline necessary to make a strike effective, a labour union would be impotent; but that also is a matter for the Legislature.

The conclusion to which, therefore, I am compelled is that the law of this Province applicable to the facts of this case is, to all intents and purposes, the law applicable to labour unions in England as it was declared to be in *Hornby v. Close* in 1867 and in *Farrer v. Close* in 1869, and as it was before the doctrine of restraint of trade as applied to labour unions was ameliorated by the legislation of the British Parliament in 1869 and in later years. In other words, I am compelled to hold that in this Province the International Ladies' Garment Workers' Union is an illegal society, incapable because of its illegality of maintaining this action, or indeed any other civil action in an Ontario court. . . .[1]

It is abundantly clear to me from the foregoing extracts that the case now under consideration by me is squarely covered by the rule of law in the *Russell* case, both as to the rules and practices of the International Ladies' Garment Workers' Union and as to its collective bargain with the Cloak Manufacturers' Protective Association.[2]

The decision in the *Polakoff* case, then, is to the effect that a trade union in Ontario, which is not registered under the Trade Unions Act and which has rules for conducting strikes and controlling its members as to employment by fines and forfeiture of benefits, is unlawful at common law to the extent that it is incapable of maintaining an action in any Court of law. Certain provisions of the collective agreement which ran from January, 1925, to January, 1928, are described in the judgment but no comment is made as to its character at law other than the general statement quoted above that it is covered by the rule laid down in the *Russell* case and is, therefore, unenforceable. It appears to be an ordinary collective agreement between a union and employers' association providing for a "closed shop" in the women's clothing industry in Toronto as far as the shops operated by the employers signing the agreement are concerned. That is, only members in good standing of the International Ladies' Garment Workers' Union were to be employed. The consent of the union was necessary for the letting out of work; home work was not permitted nor

[1] At p. 57.
[2] At p. 60.

individual agreements. A Board of Sanitary Control was to be set up to improve conditions in the industry. Hours of labour and rates of wages were fixed and provision made for the control of strikes and of the members by a system of fines and other penalties.

Collective Agreements

Except in the Province of Quebec and in the *Polakoff* case in Ontario, agreements arrived at by trade unions and individual employers or associations of employers as a result of collective bargaining[1] appear to have come before the Courts in Canada only as evidence of the terms of a contract between an employer and an individual employee. As legislation to give legal effect to collective agreements and to enable the provisions of any such agreement to be extended to cover all persons engaged in the particular industry whether parties to the agreement or not is being discussed in Canada at the present time, these two questions are dealt with at some length.

As to the value of the method of collective bargaining the following comment appears in a recent report by the British Ministry of Labour:

> Collective bargaining between employers and workpeople has, for many years, been recognized in this country as the method, best adapted to the needs of industry and to the demands of the national character, for the settlement of the conditions of employment of the workpeople in industry. Although collective bargaining has thus become established as an integral part of the industrial system, it has discharged its important function, on the whole, so smoothly and efficiently and withal so unobtrusively, that the extent of its influence is apt to be, if not altogether overlooked, at least underestimated. It has produced a highly co-ordinated system of agreed working arrangements, affecting in the aggregate large numbers of workpeople and defining, often with great precision, almost every aspect of industrial relations.[2]

In Britain, a collective agreement is not in itself a contract at civil law giving rise to obligations between the parties. It is "a gentlemen's agreement" morally binding on those who enter into it but of no legal effect by itself. The law of contract is part of the common law of England and a collective agreement is not deemed to fulfil the conditions necessary to a commercial contract.

> A contract, then, is an agreement or undertaking, entered into by at least two parties, and enforceable by an action for damages, wherein one or more of the parties promises, expressly or by implication to do or refrain from doing certain acts at the request or for the benefit of another party; the promise being either given for valuable consideration or embodied in a particular form.[3]

But, in the words of a French writer,—

> In a contract each contracting party wills a different thing and aims at a different object. [In a collective labour agreement], both parties will the same thing: the creation of a general permanent rule, of a law

---

[1]The term "collective bargaining" appears to have been first used by Beatrice Webb in *The Co-operative Movement in Great Britain*, 1891, p. 217.

[2]*Report on Collective Agreements between Employers and Workpeople in Great Britain and Northern Ireland*, 1934, vol. 1, at p. ii.

[3]Jenks, E., *Book of English Law*, London, 1928, p. 395.

> which shall henceforth control the conditions of work in their trade. The parties have the same object in view, namely to avoid a conflict or to resolve one which has arisen between the employers and employees of a particular trade and to establish the law for their future relations. As to the suit which arises from the collective labour contract, is it possible to see therein upon any basis whatever a relationship of creditor and debtor, an obligatory relationship between one person who is under a duty to render a certain performance and another who has the right to demand it? There is simply a general, permanent rule, a law according to which the individual contracts in the trade shall be made, each of the contracting parties having the power to rescind an agreement which may have been entered into contrary to the rule established by the collective contract.[1]

So it is in English law. The rules laid down in a collective agreement may enter into the contracts of service of the individual members of the trade union who are hired by employers who are signatories to the agreement or who are members of an association whose agents sign the agreement. Further, not only is the collective agreement not a legal contract in English law but under the English Trade Union Act, 1871, a trade union has not the legal personality to claim from the Courts the enforcement of an agreement with an employer governing working conditions, even if such an agreement were capable of being regarded as a contract. The Act gives to registered unions the right to sue and be sued in their own names only with respect to their property.[2] Moreover, it is stipulated that the Act shall not affect "any agreement between an employer and those employed by him as to such employment." One of the classes of agreements which the Courts are prohibited from enforcing under section 4 of the Act is that of agreements "between one trade union and another." An employers' association, as well as a labour organization, may be a "trade union" under the Act, and the latter clause would therefore, prohibit the enforcement of such agreements.[3] It has been suggested at different times in Britain that legislation should be enacted to render a collective agreement enforceable at the expressed will of the parties to the agreement but the general body of employers and employed have not favoured legislation to this effect. In European countries, generally, special legislation provides that collective agreements voluntarily entered into become legally binding on the parties. In most of these countries, individuals may not make contracts contrary to the provisions of the collective agreement. Where the terms of the individual contract of employment, however, are more favourable to the worker, the laws of Austria, Germany,[4] Italy and Russia permit the latter provisions to prevail. In Australia and New Zealand, collective agreements have equal validity with arbitration awards under the various systems of arbitration of industrial disputes in force in those countries, but agreements may not lay down conditions at variance with the awards of the arbitration courts. In Austria and Germany, Queensland and Western Australia, the scope of a collective agreement may be extended to include persons not members of the trade union or association sign-

[1] Duguit, Leon, Collective Acts as distinguished from Contracts, (1918) *Yale Law Journal* at p. 763.

[2] For some modification of this in *Taff Vale* decision, see *supra*, p. 28.

[3] Slesser and Baker, *The Law of Trade Unions*, London, 1921, p. 319. Also *Report of Commission on Trade Disputes and Trade Combinations*, 1906, p. 116. See *infra*, p. 55.

[4] In Germany a decree of 1918 dealing with collective agreements was in force up to the dissolution of the German trade unions in 1933.

ing the agreement, provided the agreement was arrived at by the employers who employ a majority of the workers in the industry to which it relates in the district to which it applies.[1] In New Zealand and South Africa, such agreements may be made the common rule on the application of one party, in the case of New Zealand, on the application of both parties in South Africa. In Italy and Russia, agreements made under the special legislation on the subject apply to all persons whether or not they are members of the trade union or association which legally represents them.[2]

In Britain, the question of collective bargaining has been studied by several commissions of inquiry appointed by the Government over a considerable period of years. The conclusions arrived at by these commissions are set out in the following extracts from their reports. The members of the Royal Commission on Labour, 1892-1894, were unable to agree on recommendations with regard to collective agreements but a minority group were in favour of legislation to enable agreements to be made binding:—

> We think that the extension of liberty to bodies of workmen or employers to acquire fuller legal personality than that which they at present possess is desirable in order to afford, when both parties wish it, the means of securing the observance, at least for fixed periods, of the collective agreements which are now, as a matter of fact, made between them in so many cases. The associations which might avail themselves of the liberty might in some cases be Trade Unions or Employers' Associations, and in other cases bodies of workmen employed in a few establishments, or even a body employed in a single establishment, according to the circumstances of each industry. We do not suggest that a scheme of legally enforceable agreements would be applicable to the circumstances of all, or even, at present, of the larger part of the industries of this country. We find, however, from the evidence that a considerable and very important part of British industry is conducted under collective agreements made in the most formal way between highly organized trade associations, and that the substitution of agreements between associations for agreements between individual employers and individual workmen is a growing practice, and one which is intimately connected with the mode and scale upon which modern industry is at present carried on. It seems to us to be clear from the evidence both of employers and employed that the advantages of this system greatly outweigh the disadvantages. . . .
>
> 12. With regard to the collective agreements, there should, perhaps, be some statutory conditions attaching to them, for instance:—
>
> (1) That such agreements should specify a period for which they were intended to hold good, and a period for notice of amendment or renewal,

---

[1]In Germany and Austria, agreements may be declared "generally binding if they have become the standard in fixing labour conditions for the industry in question in the area covered by the collective contract." (Wording of the English translation of German decree, International Labour Office Legislative Series, 1923—Ger. 2). ("Agreements which have acquired a preponderant importance in the shaping of conditions of labour in the trade in the area concerned" is wording of translation of German decree in *Freedom of Association*, International Labor office, 1928, vol. 3, p. 64,.)

[2]For discussion of legal status of collective agreements, strikes in breach of such agreements, etc., see *Freedom of Association*, International Labour Office, Geneva, 1927-1930, 5 vols. Studies and Reports, Series A, No. 28-32; also, Raynaud, Barthélémy, *Le Contrat Collectif a l'Etranger*, Paris, 1929.

(2) That such agreements should be registered in some central local public office, and should be open to inspection by the parties concerned.[1]

From the Royal Commission on Trade Disputes and Trade Combinations, 1906:—

A good deal of evidence has been laid before us from no unfriendly point of view to trade unions that it would be of great advantage that trade unions *should* be *able to enter* into binding agreements with associations of employers, and with their own members to enable them to carry on their agreements. At present this is impossible owing to the terms of Section 4 of the Trade Union Act of 1871. We think that facultative powers might be given to trade unions, either (*a*) to become incorporated subject to proper conditions, or (*b*) to exclude the operation of Section 4 or some one or more of its subsections for the purposes above mentioned.[2]

From the Industrial Council, established in 1911, of which the chairman was Mr. George R. Askwith, now Lord Askwith, for many years engaged in conciliation work in connection with industrial disputes:—

6. It may be of advantage at the outset to consider what might be regarded as a working definition of an industrial agreement. (It is understood that there is no legal definition of the term.)

An industrial agreement may be described as an arrangement arrived at by employers and workpeople with a view to formulating the general conditions of employment in a particular trade and district. It is essentially different from (though to a large extent it forms the basis of) the contract of service entered into between an individual employer and an individual workman. It is, in most cases, arrived at because the employers and workpeople think that a collective agreement is a desirable method of formulating what they have agreed shall be (for the time being, or for some period mentioned in the agreement) the principal terms governing the contracts of service between individual workmen. . . .

7. It is to be noted that industrial agreements, considered as contracts between employers and employed, can not fairly be compared with the ordinary commercial contracts made between individuals or corporate bodies. In the case of ordinary commercial contracts the persons who enter into the contracts are the principals directly concerned, or at least persons acting under well-defined authority from principals. Industrial agreements, on the other hand, are frequently made—especially on behalf of the workpeople—by representatives who, by reason of the numbers involved and the circumstances which surround trade movements, find it difficult to obtain well-defined authority to enter into a settlement, or even to ascertain, beforehand, the exact wishes of those whom they represent.[3] . . .

61. . . . .The whole organization of collective bargaining of which we have expressed our approval, is based upon the principle of consent. We have found that such collective agreements have been as a rule kept, and we are loth either to interfere with the internal organization of the associations on both sides by putting upon them the legal necessity of exercising compulsion upon their members, or to introduce a new principle which might have far-reaching and unexpected effects upon the natural growth

[1] *Fifth and Final Report*, Observations appended to the Report, p. 116. The view expressed in this Report that trade unions in Britain could not be sued because of their lack of legal personality was a mistaken one. It appears to have been based on *Temperton v. Russell supra*, p. 27.

[2] P. 16.

[3] *Report on Enquiry into Industrial Agreements*, 1913, at p. 4.

of such associations or upon the spirit with which as a rule they have been carried on. We have therefore, as will be seen, come to the conclusion that the establishment of a system of monetary penalties is not desirable, and that such penalties as prohibition of assistance to persons in breach should not be made legally obligatory. We have stated, however, and we wish to give our opinion the maximum degree of emphasis, that where a breach of an agreement has been committed no assistance, financial or otherwise, should be given to the persons in breach by any of the other members of the associations connected with the agreement. The language of our Report is intended to express as strongly as possible our adherence to the view that moral influence should in every feasible way be brought to bear in favour of the strict carrying out of agreements and that, in cases where, by any of the methods to which we have alluded, a breach is found to have been committed, associations should accept the findings of the tribunal and should exercise to the full the disciplinary powers of their organization, assisted, as would no doubt be the case, by the force of public opinion.

62. As regards the second portion of our reference (as to how far, and in what manner, industrial agreements which are made between representative bodies of employers and of workmen should be enforced throughout a particular trade or district), we have come to the conclusion that, subject to an enquiry made by an authority appointed by the Board of Trade, an agreement entered into between Associations of employers and of workmen representing a substantial body of those in the trade or district should, on the application of parties to the agreement, be made applicable to the whole of the trade or district concerned provided that the agreement fulfils the requirements laid down in the Draft Scheme in paragraph 58 and contains conditions to secure:—

(*a*) That at least . . . .days' notice shall be given of an intended change affecting conditions as to wages or hours, and

(*b*) That there shall be no stoppage of work or alteration of the conditions of employment until the dispute has been investigated by some agreed tribunal and a pronouncement made upon it.[1]

The above reports were all published prior to the war. Both employers and employed were opposed to legislation rendering collective agreements legally binding or to extend them beyond the parties themselves. The Trades Union Congress in both 1912 and 1913 defeated by a large majority resolutions to permit the extension of an agreement to the whole of the trade or districts concerned. The Munitions of War Act, 1917, provided that awards made in pursuance of collective agreements governing the majority of persons engaged on munitions work in any trade, either generally or in a particular district, might be made binding by the Minister of Munitions on all employers and workers so engaged.[2] Similar powers, which lapsed in November, 1919, were given to the Minister of Labour by the Wages (Temporary Regulation) Act, 1918. These emergency measures lead to some practical experience with legally binding agreements and statutory powers for the fixing of wages, etc.

When the Committee on Relations between Employers and Employed (the Whitley Committee) was set up in October, 1916, as a sub-committee of the Reconstruction Committee, it was directed to make suggestions for securing a permanent improvement in the relations between employers and workmen. In

[1] Pp. 16-17.
[2] C. 45, s. 5.

an appendix to its Interim Report on Joint Standing Industrial Councils in 1917, the committee replied as follows to the question—Is it intended that decisions reached by the Councils shall be binding upon the bodies comprising them?

> 4. (*a*) It is contemplated that agreements reached by Industrial Councils should (whilst not of course possessing the binding force of law) carry with them the same obligation of observance as existed in the case of other agreements between Employers' Associations and Trade Unions. A Council, being on its workmen's side based on the Trade Unions concerned in the industry, its powers or authority could only be such as the constituent Trade Unions freely agreed to.[1]

On the other hand in the body of this report the following occurs:

> 21. It appears to us that it may be desirable at some later stage for the State to give the sanction of law to agreements made by the Councils (joint councils of employers and employees) but the initiative in this direction should come from the Councils themselves.[2]

The summary of the reports made on industrial conditions in different areas of Great Britain by commissioners appointed to inquire into the causes of industrial unrest in 1917 contains the following statement:

> Further, it is recommended that when an agreement has been drawn up between representatives of employers' federations and trade unions, that agreement should be binding on all in the trade concerned.[3]

Following the report of the Whitley Committee, joint industrial councils were set up in a considerable number of industries. Then arose the problem of the employers who remained outside the councils and whose establishments, in some respects, might not come up to the standards set by the council for the industry. In January, 1920, the Association of Joint Industrial Councils adopted a resolution asking for authority to make their agreements binding on the whole trade. The Minister of Labour replied in the House of Commons on March 8:

> I propose to answer this question in some detail, because the principle involved is one to which public attention ought to be given.
>
> I should say, in the first place, that, while it is the fact that several Joint Industrial Councils have asked for powers to make their agreements compulsory on the whole trade, it is far from being the case that this demand is universal. This division of opinion was to be expected in view of the controversial history of this and the allied question, from which it is difficult to dissociate it, of making awards of Courts of Arbitration compulsory. . . . I made a further attempt to ascertain the reception which the proposal would meet with from the workpeople's organizations at the time when I was introducing the Industrial Courts Act. At that time, however, it was rejected by the trade union organizations largely on the ground that it was proposed, and I think justly proposed, to make compulsion two-sided, penalties for breach being provided equally against employers and employed. Under the Trade Union Act of 1871, and the Trade Disputes Act, 1906, not only is it impossible to enforce legally an agreement made between employers' associations and workers' associations,

[1] Appendix, p. 8.
[2] Report, p. 6.
[3] P. 7.

but it is also impossible to bring an action against either such association for inducing or assisting its members to break the contract to which it has itself been a party. Contracts between employers' and workmen's associations rest, therefore, only upon the good faith of the parties to them, and unless the law is altered in this respect, it is difficult to see how it is possible to make them legally binding upon persons who are not themselves parties to the agreement. The difficulty of making compulsion apply equally is perhaps not greater than the practical difficulties which would be involved in making agreements of Joint Industrial Councils compulsory on the whole trade. Not only would complicated questions of demarcation and trade definition inevitably arise, but the questions of the extent to which any given group of employers or employed represented a large majority of the trade would require close examination. There is a further difficulty that certain wage settlements affect an industry, while others affect a craft extending through a number of industries. For these reasons, it is clear that the matter is not one which can be settled without a great deal of further discussion and examination. In saying this, however, I am not averse from giving further consideration to this matter, but unless a substantial agreement of opinion exists among employers and workpeople, I should not be prepared to introduce the necessary legislation.[1]

A similar resolution in 1921 met with the same reply. In 1923 the Trades Union Congress voted down a proposal to make decisions of the councils binding on the whole trade. The Association of Joint Industrial Councils continued to advocate legislation of the kind and had a Bill introduced in the House of Commons in 1924. Under this Bill, on application of a council, the Minister of Labour was to be empowered "to make an order to secure the legal enforcement of the agreements of a joint industrial council." Other clauses were designed to encourage the formation of joint councils and a central board to associate them. The Bill had a large majority on second reading but it was indicated that the main support was given because of its encouragement to the organization of joint councils and that, "at the Committee stage, drastic amendments of the proposals in respect of the extension of agreements would probably be sought."[2] No further progress was made owing to the resignation of the Labour Government in October, 1924.

In 1925, the Trades Union Congress passed a resolution urging the giving to national agreements voluntarily entered into and approved by joint industrial councils, the same validity as awards under the Trade Boards Acts, 1909 and 1918, with the object of ensuring the observance of fair conditions of labour by all engaged in the industries, whenever requested by the parties to the agreement.

From 1925 until 1929, however, the trade unions appeared indifferent if not hostile, to the Industrial Councils Bill. But in view of the continued depressed condition of industry, the Congress renewed discussion of the subject. In December, 1929, they proposed to promote a Bill for legalizing voluntary agreements and hoped for the support of the industrial councils. Before agreement was reached by the two organizations a resolution to introduce a Bill on behalf of the Association of Industrial Councils was brought up in the House of Commons on June 24, 1930, the mover making it clear that he expected only dis-

[1] *Parliamentary Debates*, p. 949.
[2] Committee on Industry and Trade (Balfour Committee), *Survey of Industrial Relations*, 1926, p. 318.

cussion of the proposed legislation. In December, 1930, in the next Parliamentary session, the Association of Industrial Councils introduced in the House of Commons the Industrial Councils Bill "to legalize voluntary agreements when so desired." Under this Bill, a decision of an industrial council on almost any subject within the range dealt with by the joint councils might, on application to the Minister of Labour and after time for discussion or appeal, be made an order legally binding on the industry in whole or in part. A penal clause applied only to employers. The position of the trade unions was left undisturbed and the operation of the Bill was to be restricted to the agreements of industrial councils. This Bill was withdrawn on May 8, 1931, in order to bring forward the measure agreed to between the Association of Industrial Councils and the Trades Union Congress which would apply to all negotiating machinery, not only to industrial councils. Accordingly, on June 25, 1931, a Rates of Wages Bill to provide for the sanctioning and enforcement of rates of wages was presented to Parliament. In this Bill no penalties were provided, the onus lying on the employee who did not receive the stipulated rate of wages to recover such sum by proceeding under the Employers' and Workmen's Act or otherwise. In reply to a question on September 16, 1931, the Prime Minister stated that in accordance with the general policy announced by the Government, it would not be possible to proceed with the Bill. Again on March 23, 1932, the Industrial Councils Bill was brought before Parliament but no further action was taken and the trade unions appear to have taken no further part.

To the 1924 Industrial Councils Bill, which was in general similar to each of the Bills introduced by the Association of Industrial Councils up to November, 1933, the Balfour Committee on Industry and Trade in its Final Report in 1929 found grave objections in that it proposed to give compulsory powers in regard to a great variety of questions which

> cover nearly the whole range of industrial relations together with certain questions of workshop management. . . . It has further to be remembered that as already indicated, Joint Industrial Councils represent only one type, and that not the most firmly established or generally accepted type, of organization for the collective settlement of industrial questions. In many of the great exporting trades the system has not taken root. In these circumstances it would hardly be possible to give the desired powers to Joint Industrial Councils and to refuse them to the many other forms of joint organization and negotiating machinery described in our Survey. . . . Compulsory enforcement of agreements dealing with so wide a range of questions must presumably be bilateral, and the workpeople and their Trade Unions might find themselves exposed to civil action or criminal prosecution for failure to fulfil an agreement which had received compulsory force. We do not think that they would accept such liability, and even if some of them were willing to do so, we should dread the results on industrial relations of substituting cast-iron legally drafted documents for the present less formal and more elastic agreements and understandings, which, if they have only a moral validity, are, generally speaking, loyally observed.
>
> The force of these criticisms is somewhat, but not in our judgment very greatly, attenuated by the proposed option to be enjoyed by an Industrial Council to refrain from applying for the compulsory enforcement of any particular agreement, or by the right of the Minister of Labour to

refuse confirmation. For if the power were once conferred by law, there would probably be great pressure for its exercise from one side or the other on the Councils, while the pressure from both sides on the Minister to confirm an agreement submitted to him would be very difficult to resist.

We feel, however, that there is one exceptional case in which most of the foregoing objections would cease to apply, and that is if the scope of the compulsory powers were strictly limited to the fixing of minimum rates of wages for the lowest paid grade of persons employed in the industry, in cases where such rates are "exceptionally low" within the meaning of the Trade Boards Act, 1909. The enforcement of such minimum wages would involve no liability to legal proceedings against trade unions, and no substantial threat to the present voluntary machinery for negotiation in the industry.[1]

During the last Parliamentary session, a Bill sponsored by the Association of Industrial Councils was presented on November 24, 1933. Unlike the earlier Bills, the 1933 Bill would apply compulsory powers only to rates of wages. The two Labour members of the House of Commons who spoke on the Bill opposed it. The Minister of Labour referred to the diverse views of labour on the subject and pointed out that when the Government had asked for information from the industrial councils as to their views of unemployment insurance and the 40-hour week he had been referred, except in two or three cases, to the employers' organizations on the one side and to the Trades Union Congress on the other. The Bill was rejected by 87 votes to 44.[1]

Later in the same session a Bill was passed to make temporary provision for enabling statutory effect to be given to rates of wages agreed upon by representative organizations in the cotton manufacturing industry. The Cotton Manufacturing Industry (Temporary Provisions) Act, 1934, is based on the same principle as the Industrial Councils Bill—that of making binding on all employers and employees in an industry or section of an industry certain provisions of collective agreements voluntarily arrived at by a majority of the employers and employees in the industry—but the Bill was drawn up and enacted as an emergency measure to remain in force until December 31, 1937. It applies only to rates of wages in the weaving side of the cotton industry in the districts specified. Moreover, either party to an agreement may give three months' notice to terminate the agreement. An amendment in the House changed the words "the majority of employers" to "the employers controlling the majority of looms." In moving the second reading of the Bill the Minister of Labour stated:—

> Cotton has had to face competition of a very severe character during the past few years. . . . The result of this has been a reckless scramble for business, and the industry has become involved in internal dissension just at a time when the pooling of the combined resources of technique and finance was most essential. No one regrets more than the organizations concerned that the proposals I am making are necessary. . . . So it will be observed that the question is not one of fixing wages at a higher or lower level or at any particular level. The question before the industry now is how to secure that the whole principle of collective bargaining does not break down. The great majority of the employers are anxious to honour

[1] Pp. 124-125.
[2] *The Times*, London, February 24, 1934.

agreements. The payment of lower wages where that has taken place, I am advised, has not resulted in the sale of a single extra yard of cloth anywhere. It merely means that employers who are faithful to the agreements, and wish to keep them, find themselves unable to compete with those employers who either have not been parties to the agreements or, if they have, have broken away from them. The position of the employer who wishes to keep agreements is therefore hopelessly prejudiced if he is to be subjected all the time to this undercutting or what in a different connection is often called black-legging. . . . Neither the Government nor any independent party is given any power to fix rates of wages, or to interfere in any way with the voluntary negotiation of wages and working conditions. I attach great importance to that, and so do the industry. This is a matter for them, and not for me or for this House, and in this Bill we are careful to secure that we do not in any way interfere with the great principle of voluntary negotiation with regard to wages and working conditions. The voluntary system, therefore, continues just as before.[1]

The above quotations on the question of legally binding collective agreements and the movement in Britain for legislation to render them enforceable have been set out rather fully in order to present the diverse views of persons who have studied the question or who are closely concerned with the method of collective bargaining. The subject is of considerable interest in Canada just now. Action was taken in 1924 in Quebec to give legal effect to such agreements and somewhat similar action has been advocated in other provinces.

Under the Quebec Professional Syndicates Act[2] enacted in 1924, collective agreements have a definite legal standing under certain conditions and damages for breach may be recovered. Further, an Act was passed by the Quebec Legislature in 1934[3] to enable the Lieutenant-Governor in Council, on the recommendation of the Minister of Labour, to extend a collective agreement between an association of employees and one or more employers or an association of employers so that it shall bind all the employees and employers in the same trade or industry, provided such persons carry on their activities within the district determined by the agreement. The Minister of Labour may recommend the extension of an agreement after hearing any objections that may be made to it and if he deems that its provisions " have acquired a preponderant significance and importance for the establishing of conditions of labour " in the industry and district affected. The only provisions of an agreement which may be made obligatory are those regarding wages and hours of work. Certain sections of the Collective Labour Agreements Extension Act follow:

2. The Lieutenant-Governor in Council may order that a collective labour agreement, made between, on the one part, one or more associations of employees and, on the other part, employers or one or more associations of employers, shall also bind all the employees and employers in the same trade or industry; provided that such employees and employers carry on their activities within the territorial jurisdiction determined in the said agreement.

Whenever an order is made under the preceding paragraph, the only provisions of the collective labour agreement which thus become obligatory,

[1] *Parliamentary Debates*, May 17, 1934.
[2] *Revised Statutes of Quebec, 1925*, c. 255 and amendments. For discussion of this Act see *infra* p. 71.
[3] *Statutes of Quebec*, 1934, c. 56.

upon the classes of employees and employers concerned, are those respecting rates of wages and hours of labour.

Such order shall remain in force during the same period of time as the collective agreement.

3. Any association of employees or employers, a party to a collective labour agreement, may request the Lieutenant-Governor in Council to pass an order-in-council under the preceding section.

Such request shall be made by a petition addressed to the Minister of Labour. The petition must be accompanied by a duly certified copy of such agreement.

4. Upon receipt of a petition, the Minister of Labour shall cause notice thereof to be given in the *Quebec Official Gazette* and, during the thirty days from the publishing of such notice, he shall receive the objections to the request contained in the petition.

At the expiration of such delay, the Minister, if he deems that the provisions of the collective labour agreement which is the object of such petition have acquired a preponderant significance and importance for the establishing of conditions of labour in a trade or industry in the region for which the agreement was entered into, may recommend the approval of the petition to the Lieutenant-Governor in Council. . . .

5. Subject to the formalities, delays and rules mentioned in section 4 of this Act, the Lieutenant-Governor in Council may, at the request of the parties to the collective agreement, repeal or amend the order-in-council passed under section 2.

Such repeal or amendment shall come into force from and after its publication in the *Quebec Official Gazette.*

6. The provisions of a collective labour agreement made obligatory under this Act shall, in the region fixed, govern all the individual labour contracts in connection with the trade or industry contemplated by the agreement.

However, when they are to the advantage of the employed, the provisions of an individual labour contract shall have effect unless they be expressly prohibited by those of a collective labour agreement which has been the object of an order-in-council under section 2.

11. The Lieutenant-Governor in Council may refuse to apply the provisions of this Act to any industry liable, in his opinion, to suffer, through their enforcement, serious injury from the competition of foreign countries or of other provinces.

12. Every collective agreement, liable to be made obligatory, must take into account the economic zones of the Province in establishing labour conditions.

13. Nothing in this Act shall be deemed as compelling an employer or an employee to become or not to become a member of an association of his industry or trade.

The first agreement approved and extended by order-in-council under this Act was one between the Shipping Federation of Canada and l'Association des Débardeurs Syndiqués du Port de Montréal. It was approved on July 19, 1934, Since that date some twenty agreements made binding and extended to cover a specified district includes those governing some 50,000 workers in different building trades in Montreal, Quebec and Three Rivers, more than 25,000 boot and shoe workers and smaller numbers in other industries. Two of these agreements

have been signed by an "international" trade union—the typographical union in Quebec City and the Building Trades Council[2] in Montreal. National Catholic Unions have been parties to the other agreements. The Amalgamated Clothing Workers of America have petitioned the Minister of Labour to make their agreement binding throughout the province. At the time of writing, the extension of this agreement had not been approved by the Lieutenant-Governor in Council. In two actions already brought under the Act for wages alleged due under the terms of the collective agreement in the building trades in Montreal, the Court has upheld the workmen's claims.

Some difficulties have arisen in the administration of this statute. Opinion appears to be divided as to the desirability, in some industries, of different standards of wages and hours in urban and rural districts and as between different parts of the province. The Confederation of Catholic Workers in presenting their annual petition for legislation to the Quebec Government in December last requested certain amendments to the Collective Labour Agreements Extension Act: that all workers under a binding agreement be required to have "a certificate of competence" granted either by the union or by a board of examiners; that employers also be required to have a licence; that a fine of $500 be provided for a violation of any agreement made binding, and for a second offence, that the licence of an employer violating an agreement be suspended for six months; that, on the application of one or other of the parties, a board of examiners must (not "may" as in the present Act) be appointed by the joint committee in each industry charged with supervising the carrying out of the agreement; that if employers refuse to negotiate an agreement, the Minister of Labour have the right to call a conference of both sides with some other persons chosen by himself and, failing agreement by the conference, to approve the wages and hours schedules determined by a majority vote of the conference; that the terms of an agreement as to apprentices be added to those regarding wages and hours as within the scope of a binding agreement; that funds be provided for the work of the joint committees and, finally, that the Act be extended to include salaried workers.[1]

The Department of Trade and Industry Act[2] enacted by the Alberta Legislature in 1934 sets up a department of government to carry out the provisions of the statute. Under Part II of the Act, one function of the Minister of the new department is to arrange conferences for the drawing up of

> codes and setting up standards of ethics, methods, practices and systems applicable to the trade, so far as they relate to the activities of that trade within this Province, ... and without derogating from the generality of the foregoing, with the object of establishing. . . . minimum standards as to hours of employment and wages of any persons or class or classes of persons employed in any trade.

If a code so formulated is approved by 66 per cent of the persons engaged in the trade or by the persons owning 66 per cent of the aggregate capital invested in the trade, the Lieutenant-Governor in Council is empowered to declare it bind-

[1] Plumbers and stationary engineers are not included in this agreement.
[2] *L'Action Catholique*, Quebec, December 12, 1934.
[3] *Statutes of Alberta*, 1934, c. 33. Proclaimed in force October 18, 1934.

ing on all in the trade. Where an agreement is not arrived at by a conference representing the trade, the Minister may, with the assistance of an advisory board, draw up a code which may be made binding by the Lieutenant-Governor in Council. The Act, except Part III, however, applies in the first instance, only to wholesale and retail traders, druggists, restaurant keepers, dry cleaners, barbers, hairdressers, printers and plumbing, heating and sanitary engineers. On petition, the Lieutenant-Governor in Council may declare any other trade or industry to be within the scope of the Act. Sections 19 and 20 of the Act read:

> 19. (1) For the purpose of appointing representatives to attend any conference or hearing held under the provisions of this Act, the persons engaged as employees in any trade may form an association to which every person for the time being engaged as an employee shall be entitled to membership without discrimination and on equal terms with every other member.
>
> (2) The Minister may nominate such persons as he deems proper who are engaged as employees in the trade and who have been appointed by an association of employees pursuant to this section, or who are delegates of a trade union, to act as the representatives of the employees at conferences and hearings held under this Act.
>
> 20. No employer shall directly or indirectly do any act or thing which is calculated to interfere with the free selection by any association so formed of representatives or in any other lawful activity of the association.

Part III of the Act makes some special provision for the coal-mining industry. Most of the trades under Part II are not trades in which the workpeople are strongly organized in trade unions throughout Alberta but printers, barbers, plumbing, heat and sanitary engineers and restaurant employees are organized in some places.

It has been pointed out above that in some cases collective agreements have come before the Courts in Canada in actions brought by an individual on his own behalf. In Alberta, Manitoba and Ontario, the Courts have dealt with such cases. The first two of these suits were finally decided by the Privy Council. In the first case,[1] the plaintiff, who was a member of the Brotherhood of Railway Conductors, had been dismissed by the employing company after an inquiry had been made into the circumstances as required by the provisions of the collective agreement regarding misconduct and discipline.

> It is a matter of admission that the contract of service between the respondent and the appellant was regulated by this agreement.[2]

Both the Alberta Court of Appeal and the Judicial Committee of the Privy Council held that the union and the company had the right to make provision for the investigation of complaints which might otherwise go to the Courts, that an inquiry into this complaint had been made and cause for dismissal found. "Such a decision is binding on both parties."

The second case was an action for re-instatement or for damages for dismissal in violation of the "seniority rights" claimed under the provisions of the agreement governing working conditions in the railway shops in Winnipeg. The plaintiff was not a member of the shopmen's union but had been working under the conditions agreed upon between the union and the company. The plaintiff's

[1] *Caven v. Canadian Pacific Railway Co.* (1925) 1 D.L.R. 122; 3 D.L.R. 841.
[2] Lord Shaw at p. 841.

action failed in three Courts for different reasons.[1] As to the status of collective agreements, Fullerton, J., of the Manitoba Court of Appeal said:

> I am satisfied that so-called wage agreements entered into between workmen's unions and employers are never intended by the parties to be legally enforceable agreements. If employers do not live up to the terms of their agreements, the workmen may apply for a Board of Investigation under the Industrial Disputes Investigation Act, R.S.C., 1927, c. 112, and failing a satisfactory adjustment may go on strike, but in my opinion they cannot enforce the terms of such agreements through the Courts.[2]

When the case came before the Judicial Committee of the Privy Council, it was pointed out:

> When Wage Agreement No. 4 is examined, it does not appear to their Lordships to be a document adapted for conversion into or incorporation with a service agreement, so as to entitle master and servant to enforce *inter se* the terms thereof. It consists of some 188 "Rules," which the railway companies contract with Division No. 4 to observe. It appears to their Lordships to be intended merely to operate as an agreement between a body of employers and a labour organization by which the employers undertake that, as regards their workmen, certain rules beneficial to the workmen shall be observed. By itself it constitutes no contract between any individual employee and the company which employs him. If an employer refused to observe the rules, the effective sequel would be, not an action by any employee, not even an action by Division No. 4 against the employer for specific performance or damages, but the calling of a strike until the grievance was remedied.[3]

The distinguishing feature of an agreement between a "shop group" and a firm of men's clothing manufacturers which came before an Ontario Court was that the workmen undertook to withdraw from the trade union in the industry and the firm from the employers' association. Moreover, the plaintiffs had individually signed the agreement. It might be observed here that the term "collective bargaining" is usually applied to bargaining between a trade union as that term is commonly understood and an employer or association of employers. But a collective agreement may be made by an employer and a committee of his employees. Under the agreement in this case, the workers were "guaranteed the right to the job" and the agreement was to run for one year. When a strike was called by the union in the clothing trade, some of the signatories to this anti-union agreement left their employment but certain of them remained at work. As a result of the strike, the company which had entered into the anti-union agreement changed its policy and decided to run a union shop. Accordingly, it dismissed the employees who had remained at work "for no other cause than that they did not belong to the union." These individuals thereupon sued for wages alleged to be due under the agreement.[4] The Court held that the agreement was a legal contract. "The plaintiffs left their trade union and this constituted valuable consideration for the defendants' promise to employ them."[5]

---

[1] *Young v. Canadian Northern Railway* (1929) 2 W.W.R. 385; (1930) 1 W.W.R. 446; (1931) 1 W.W.R. 49.
[2] At p. 451.
[3] Lord Russell of Killowen (1931) 1 W.W.R. at p. 53.
[4] *Ziger et al v. Shiffer & Hillman Co.* (1932) 41 O.W.N. 392.
[5] Logie, J. here distinguished this case from *Hudson v. Cincinnati, New Orleans, and Texas Pacific Ry. Co.* *infra*, p.67.

After reference to *Young v. Canadian Northern Railway Company* and *Bancroft v. Canadian Pacific Railway*, Logie, J., awarding judgment to the plaintiffs, is reported, in part, as follows:

> The agreement in the present case differed from those under consideration in either of the above cases. It was more than a collective agreement similar to the collective bargains made by the Amalgamated Clothing Workers of America with employers on behalf of workmen—the only remedy for breach of which is a strike. It was more than merely a memorandum of rates of pay, regulations governing hours of work and scale of production, and, considered from the viewpoint of the company, it was more than evidence of its intention to be governed in the conduct of its business by the rules set out for the time stipulated. Nor was it solely the defining of a usage that was an established method of dealing adopted in this particular shop by those engaged in the Coat Department which only acquired force because the people signing it made their contract with respect to it.
>
> In the opinion of the learned Justice, the document was just what, on its face, it purported to be, namely, a contract with the individuals forming what was called a shop group, for a year's employment by the company if there was work to do and a year's service on the part of the employees on the special terms contained in the document itself.

On appeal, this decision was reversed not on the ground that the agreement between the shop group and the employer as to membership in their respective associations was not an enforceable contract in itself contrary to the opinion of the trial Court but on the ground that the agreement was

> founded on the continued existence of an independent shop the destruction of which by *vis major* would free either party from liability.

It was held that the result of the strike called by the union was such that the employer was unable to carry on a non-union shop and he was therefore freed from liability for the performance of the contract.[1] Another difficulty in the plaintiffs' way was the collective nature of the agreement.

> The agreement was in the nature of a collective bargain between the employer and the employees, and when the majority of the employees abandoned it and rejoined the Union, thus making it impracticable for the employer to continue as an independent shop, the agreement came to an end.

In another Ontario case, the plaintiff sued for wages alleged to be due under the agreement between the union and the employing company.[2] He had been paid the union rate of wages less $50 per month, the amount paid by the Workmen's Compensation Board of Ontario for injury suffered while in the service of the same company. Logie, J., held that the question of the "deduction" from the union rate was for the Workmen's Compensation Board to settle. As to the right to sue under the collective agreement, which had become a subordinate question, Logie, J., stated that he would follow the decision in the *Young* case:

> In my opinion the plaintiff has no right to sue under the wage schedule agreement regulated with his union. There is no contract under which the plaintiff as an individual can maintain an action for violation of the wage schedule. . . . It is true that in *Ziger v. Shiffer & Hillman Co. Ltd.*, I held that the agreement there being signed by the plaintiff was more than a

[1] (1933) O.W.N. 293; (1933) 2 D.L.R. 691.
[2] *Aris v. Toronto Hamilton & Buffalo Railway Co.* (1933) 1 D.L.R. 634.

collective agreement and gave a right of action to the plaintiff and that the facts in that case distinguished it from *Young v. C.N.R. Co., supra;* in the case at bar there was no such individual signing, the agreement was in essence a collective agreement and covered by the *Young* case.

Of the above cases, only that of the International Ladies' Garment Workers' Union was an action directly to enforce a collective agreement between a trade union and employer. This case emphasizes a peculiar feature of trade unionism in Canada. While politically united to Great Britain and deriving from her almost the entire body of Canadian legal principles and forms, Canada is, of necessity because of her geographical position, economically close to the United States. Many of the first trade unions in Canada started as outposts of the American labour movement and at the present time the greater part of the Canadian labour movement is affiliated with the American. The International Ladies' Garment Workers' Union, as the word "international" implies, has members both in the United States and Canada, with headquarters in New York. Like the Amalgamated Clothing Workers of America in the men's clothing industry, the Garment Workers' Union has set clearly before it certain objects at which it has aimed in an effort to reform the women's clothing industry by reducing the number of small shops, stabilizing employment by offsetting the seasonal nature of the work as much as possible and by paying unemployment benefits, maintaining sanitary conditions and carrying on workers' education on a considerable scale. The principal means of accomplishing these objects have been the maintenance of a strong union and the establishment of collective bargaining on a firm basis. Collective agreements in American cities and in Montreal, Hamilton and Toronto, when they have been arrived at, are designed to further these objects and machinery for the settlement of disputes without recourse to strikes has been set up wherever the union was strong enough to obtain recognition from a large body of employers and to bargain with them as individual firms or as an association of employers. In the American Courts up to recent years, a collective agreement was regarded not as a contract in itself but as establishing a usage governing individual contracts of service unless expressly stipulated otherwise, as in English law.[1] Of late years the tendency in the United States has been to give some measure of protection to such agreements but no decision appears to have been reported awarding damages for breach of a collective agreement.[2] In 1922, the International Ladies' Garment Workers' Union through its president applied to a New York Court for an injunction restraining the New York Cloak and Suit Manufacturers' Association from combining to direct or encourage the members of the Association to violate its agreement with the union by substituting the piece-work system for time-work. A preliminary injunction was granted and the order was later made permanent by the Supreme Court of New York.[3] After citing cases in which injunctions had been issued to restrain the procuring a breach of contract, the judge pointed out:

> Abundant additional precedents exist supporting plaintiffs' plea for equitable relief, but it would serve no useful purpose to enumerate them.

[1] *Hudson v. Cincinnati, New Orleans and Texas Pacific Railway Co.*, Court of Appeals, Kentucky (1913) 152 Ky. 711.

[2] Rice, W. G., Collective Labour Agreements in American Law. (1931) *Harvard Law Review* at p. 604.

[3] *Schlesinger v. Quinto*, (1922) N.Y. 117 Misc. 735, quoted in Sayre, *Cases on Labour Law*, 1922, at p. 661. The New York Supreme Court is an inferior court not the Court of final appeal in the State of New York.

> The only distinguishing feature in the instant case is that the applicants are the workers.[1] They are entitled to have exercised in their behalf the restraining power of the court when their legal rights are obstructed to the same extent as it has been exercised to protect the contractual rights of the employers.
>
> It cannot be seriously contended that the plaintiffs have an adequate remedy at law. That the damage resulting from the alleged violation of the agreement would be irremediable at law is too patent for discussion. There are over 40,000 workers whose rights are involved and over 300 members of defendant organization. The contract expires within six months and a trial of the issues can hardly be had within that time. It is unthinkable that the court would force the litigants into a court of law. A court of equity looks to the substance and essence of things and disregards matters of form and technical niceties. The motion is granted enjoining *pendente lite* defendants . . . from combining and conspiring in any way to order, direct, instigate, counsel, advise or encourage the members of the Cloak, Suit and Skirt Manufacturers' Protective Association or any of them, to cease performing or to violate the agreements. . . .[2]

Other American decisions, particularly in New York, show an increased tendency to give some legal effect to collective agreements. For example in 1929, the Supreme Court of New York granted an injunction requiring the defendant employer to dismiss men whom he had retained in violation of the agreement he had made with the plaintiff union.[3]

> Legislatures and courts recognize the right of labour unions to enter into lawful contracts on behalf of its [their] members with the employer for the purpose of promoting the welfare of their members, and in furtherance thereof such agreements should be clothed with legal sanction and afforded the mutual protection of the law. It is in the interest of good government that labour unions and employers should be afforded this reciprocal protection in their lawful contractual undertakings. It is proper and praiseworthy that a union, as in the instant case, having entered into a contract with the employer and feeling aggrieved because of an alleged breach thereof by the employer, should come into a court of equity and there seek the protection of its rights rather than to resort to picketing and strikes to redress its wrongs, with the resultant effect upon the orderly conduct of business and inconvenience to the public. Under the terms of the contract here presented there is mutuality of obligation. There should be mutuality of remedy. The contract is valid. The power of a court of equity to issue an injunction to prevent such alleged violation is well established.

In connection with the anti-union agreement in the *Ziger* case in Ontario, *supra,* recent developments in the American field are of interest where the so-called "yellow-dog contracts" have played an important part in numerous cases. Trade unionism in Britain has been too long established and has become too much a part of industrial life for anti-union agreements to have any signi-

---

[1] Of ten unreported American cases in which labour unions sought and obtained an injunction to restrain breach of contract before 1922, the injunction was later dissolved in all but four. *Rice*, 573, footnote.

[2] At p. 667.

[3] *Ribner v. Rasco Butter & Egg Co.*, (1929) 238 N.Y. Supp. 132.

ficance.[1] In 1928, suit was brought by the Interborough Rapid Transit Company of New York against officers of the American Federation of Labour for damages and an injunction restraining them from interfering with the agreement between the company and its employees organized in a " company union." The agreement was for two years, unless in the meantime the employment was terminated "by mutual consent," and it contained a clause under which each employee agreed not to join the trade union but to remain a member of the "company union." The Court of Appeals of New York found that

> the contract purports to bind the employee for two years, while the employer is not in substance subject to a reciprocal obligation. Where an employee abandons all right to leave the service of his employer, whereas the employer reserves practically entire freedom to discharge him, there is no compensating consideration. . . . What ever the status of the contract at law, the provisions above referred to are, to say the least, inequitable. . . . It has not been established that violence, threats, fraud, or overreaching conduct have been used to induce plaintiff's employees to become members of the Amalgamated Association, nor that other acts have been committed or threatened which would warrant the issuance of a restraining order.[2]

A definite step to prohibit anti-union contracts was taken in an " anti-injunction law " passed by the United States Congress in March, 1932,—an Act to define and limit the jurisdiction of Courts sitting in equity. This statute has no application to state courts but only to " courts of the United States " whose jurisdiction has been defined by Congress. Section 3 of the Act declares contrary to the public policy of the United States and unenforceable in any Court of the United States every undertaking or promise contained in a contract of hiring or employment whereby either party to such contract promises not to join or remain a member of any labour organization or employers' association.[3] Similar statutes have been enacted by several state legislatures.

Section 7 of the American National Recovery Act, 1933, provides that

> (*a*) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions:
>
> (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labour, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labour organization of his own choosing; and (3) that the employers shall comply with the maximum hours of labour, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

---

[1]The "document," a formal renunciation of trade unions which employers tried to induce workmen to sign, played a part in the history of trade unionism in Britain prior to 1871 but long ago ceased to be of any significance. As to public employees, the Trade Disputes and Trade Unions Act, 1927, s. 6, declares it unlawful for any local or public authority to make it a condition of employment or continuance in employment that any person shall or shall not be a member of a trade union or to place any employee under any disability or disadvantage, directly or indirectly, according as he is or is not a member of a trade union. Further, it is unlawful for any local or public authority to make it a condition of any contract or of the acceptance of any tender in connection with such a contract that any person to be employed by any party to the contract shall or or shall not be a member of a trade union.

[2]*Interborough Rapid Transit Co. v. Green* (1928) 227 N.Y. Supp. 258.

[3]Public Act No. 65.

> (*b*) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (*a*) prevail, to establish by mutual agreement, the standards as to the maximum hours of labour, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (*a*) of section 3.

Under section 7 (B) an agreement arrived at in September, 1933, by the Northern Coal Control Association and the Appalachian Coal Association on the one hand and the United Mine Workers of America on the other was approved by President Roosevelt

> with the understanding that the hours and wages and conditions of employment recited herein may also be applied to the employees who are not parties hereto and that the requirements of section 7 (*a*) of the National Recovery Act will be complied with in carrying out this agreement.[1]

Section 7(*b*) was applied for the second time in the case of a collective agreement between the mason contractors and their bricklayer employees in Greater New York and certain adjacent territory. This agreement was approved by the President in August, 1934, and, with similar regional agreements affecting various trades in different sections of the United States subsequently approved, became part of the Code of Fair Competition for the Construction Industry.

Constitutional Validity of the Trade Unions Act

To return from this digression on collective agreements to the Trade Unions Act, one other aspect of this statute remains to be considered. In several cases involving an interpretation of the Trade Unions Act in recent years, the power of the Dominion Parliament to enact such a statute has been questioned. As we have seen, the Act was copied from the Trade Union Act, 1871, passed by the Parliament of the United Kingdom, a body with full authority to legislate on any matter. But in Canada, under the British North America Act, the legislative powers are divided between the Dominion Parliament and the provincial Legislatures. To the Dominion Parliament was given authority to enact laws dealing, among other matters, with trade and commerce and with crime; among the subjects reserved for legislative action by the provinces was that of "property and civil rights." The Trade Unions Act freed trade unionists from liability to prosecution for criminal conspiracy in restraint of trade and in so doing was amending the criminal law but the Act also, however, provided for the registration of trade unions, rendered valid the agreements and trusts of registered unions, enabled

[1] *U.S. Monthly Labour Review*, p. 825.

them to hold property and to take civil action to enforce their agreements and trusts and so protect their property.[1]

The first reference by a Court to the constitutional aspect of the Trade Unions Act appears to have been made by the late Chief Justice Perdue of the Manitoba Court of Appeal in *Chase v. Starr*:

> Unlawful combinations in restraint of trade came, at common law, within the domain of criminal law. The Parliament of Canada has therefore jurisdiction under head 27[2] (not under head 2[3]) of section 91 of The British North America Act to legislate upon the subject. Where a particular trade union comes within the exception provided by section 497 of the Criminal Code[4] and its purposes are therefore not unlawful, questions relating to the property of the union and the civil rights of members in a province may fall within the legislative jurisdiction of the province, unless they are excluded by some other provision of The British North America Act.[5]

At the same time, Trueman, J., remarked:

> I think there is much in the contention that was pressed by counsel for the appellants that section 32 of the Trade Unions Act applies to unregistered trade unions. The concluding words of the section deal with property and civil rights. There may well be a doubt as to the validity of the clause.[6]

Duff, J., of the Supreme Court of Canada in discussing the same case, said:

> The question is of great importance in Canada, because of the peculiar condition of trade union law in this country. The Canadian Act, which is ch. 125 of the Revised Statutes of Canada, 1906, has not been adopted by the provinces, and as to many of its provisions there is, to say the least, doubt as to the authority of the Dominion to enact them. Section 32, for example, in providing that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render void or voidable any agreement or trust, is *prima facie* dealing with the subject of civil rights and property.[7]

On the same point, Raney, J., of the Ontario High Court in giving judgment in the *Polakoff* case observed:

> Indeed it is said that Canadian labour unions generally have not availed themselves of its protection to any extent, and if that is so, it is probably

---

[1]See comment by Honourable Alexander Mackenzie on Trade Unions Bill, *Debates of House of Commons*, 1872, p. 1122, referred to *supra* on p. 18; also references in British Columbia Legislature, June, 1902, quoted, *infra*, p. 80, footnote.

In *Canada and its Provinces*, 1913, v. 15, p. 269, The Civil Code and Judicial System of Quebec, by F. P. Walton, the following paragraph occurs:

> It is under its power to regulate trade and commerce that the federal parliament passes such general measures as the Insurance Act, the *Trade Union Act*, the Alien Labour Act, the acts for the inspection and standardization of wheat and some other staples, the laws to prevent the adulteration of food, and many others. In regard to some of the provisions in the Insurance Act, and in some of the other Acts passed under this power, it is by no means certain that the federal parliament has not invaded the provincial field.

In *Perrault v. Gauthier* (1898) 28 S.C.R. at p. 249, Justice Girouard referred to the Trade Unions Act—"In 1872, the Parliament of Canada, which has jurisdiction over matters of this kind . . . . . ." See Mercier-Gouin, L. *Des Syndicats Ouvriers au point de Vue Legal*, Montreal, 1921, pp. 24-25 and 38-42, for discussion on the constitutional aspect. This writer emphasizes the character of trade unions in restraint of trade at common law, and inclines to the view that the legislative authority as to "trade and commerce" vested in the Dominion Parliament confers powers to enact laws regarding trade unions.

See also Lapointe, Simon, Legislation Syndicale a l'Etranger et au Canada, in *Semaine Sociale du Canada*, deuxième Session, Quebec, 1921, p. 236.

[2]Relating to criminal law.

[3]Relating to trade and commerce.

[4]This section is that taken from the Trade Unions Act declaring unions not liable for conspiracy merely on the ground that they are in restraint of trade.

[5](1923) 3 W.W.R. at p. 512.

[6]At. p. 541.

[7](1924) 66 S.C.R. at p. 507.

so for two good reasons. So far as the Trade Unions Act of Canada gives protection against criminal prosecution, the labour unions are better protected by sections of the Criminal Code of Canada, and, so far as it deals with property and civil rights, which it purports to do by removing the common law disability of registered trade unions to make contracts, it would appear to be clearly *ultra vires*.[1]

In 1930, an action for libel was brought by a contractors' association which had been registered under the Trade Unions Act but the registration of which had been cancelled by the Registrar General in view of the findings and recommendations of a commissioner appointed under the Combines Investigation Act to investigate the operations of the association.[2] On a hearing before the trial, of certain question of law and of a motion for an order to stay the action on the ground of the lack of status of the plaintiff association to maintain it, Middleton, J., of the Ontario Supreme Court, after analyzing the English and the Canadian Acts regarding trade unions, concluded:

> This analysis of the Acts makes it plain to me that the Dominion Act is nothing but a statute dealing solely with property and civil rights and therefore *ultra vires* and for that reason quite ineffectual to confer any valid status upon the trade union.[3]

PROVINCIAL LEGISLATION RELATING TO TRADE UNIONS

In three of the provinces of Canada, a statute dealing with trade unions in one or more aspects has been enacted by the Legislature. It will be convenient to deal with these laws in the reverse order of their enactment.

Professional Syndicates Act of Quebec.

The Quebec Legislature passed the Professional Syndicates Act[4] in 1924 following a petition for such legislation in 1923 by the Confederation of Catholic Workers.[5] This organization was formed in 1922 as a central body to co-ordinate the aims and activities of the Catholic Unions which had been developing in the Province of Quebec since 1907, and had grown rapidly during and after the war years. At their third annual convention in 1921, the National Catholic Unions voted in favour of a law for the incorporation of trade unions:

> The convention regrets being unable to advise the National Catholic Unions to register at Ottawa, for the law authorizing registration is manifestly incomplete and does not give unions sufficient powers for carrying out their union activities. The convention charges its executive committee to ask the provincial and federal governments for a statute conferring on trade unions a civil personality. Its desire is that this law should be modelled on the French law of March 20, 1920, which allows unions to appear in court in the interests of their trade, to enter into contracts with any other unions, societies or undertakings, especially collective labour contracts, and to use union labels. The convention requests that this statute give to unions all the necessary powers for the improvement of the trade and for the mutual assistance of the members. The convention claims for the unions the legal

[1] *Polakoff v. Winters Garment Co.* (1928) 62 O. L. R. at p. 54.
[2] *Amalgamated Builders' Council v. Herman* (1930) 2 D.L.R. 513.
[3] At p. 520. Middleton, J., points out previously that the section declaring trade unions not liable as criminal conspiracies has been incorporated in the Criminal Code.
[4] *Statutes of Quebec*, 1924, c. 112 (R.S. 1925, c. 255) amended 1926, c. 62; 1929, c. 70; 1930-31, c. 98; 1932, c. 87; 1934,c. 67.
[5] *The Labour Gazette*, vol. 23, p. 994.

right to acquire by onerous or free title, to possess and dispose of property, movable or immovable; it requests also that certain property of the unions, particularly benefit funds, should be declared not liable to seizure.[1]

At the 1922 session of the Quebec Legislative Assembly, a resolution was moved in favour of a law for the compulsory incorporation of trade unions and the strict enforcement of laws against strikers who resort to violence.[2] The motion was amended to read:

> This House, recognizing that the Canadian workers are one of the sanest elements of our population, invite the labour organizations of this Province to give themselves a constitution which will be essentially Canadian, and to continue to co-operate in the industrial development of the Province in an orderly manner and while living in the respect of our laws.

After some debate the amended resolution was adopted by a vote of 34 to 4.[3]

Under the Professional Syndicates Act, 1924, as amended, a syndicate may be formed by twenty or more persons in similar or related trades, "for the defence and provision of the economic, social and moral interests of the profession." Only British subjects may compose the directorate and two-thirds of the members must be British subjects. When the memorandum of association has been approved by the Lieutenant-Governor in Council it is constituted "a corporation enjoying civil rights." Section 6, in part, and sections 14*a* and 20 are quoted:

> 6. Professional syndicates may appear before the courts and acquire, by gratuitous or onerous title, movable and immovable property suited to their particular objects. They shall, subject to existing laws, enjoy all necessary powers for the attainment of their objects and may in particular:
>
> (1) Establish and administer special indemnity funds for the heirs or beneficiaries of deceased members or for the members on the decease of their consorts, and special funds for superannuation, assistance in case of illness, unemployment or other funds of a similar nature, which shall be governed exclusively by the by-laws approved by the Lieutenant-Governor in Council, and subject to the conditions provided for by order in council approving such by-laws.[4] . . .
>
> (9) Enter into contracts or agreements with all other syndicates, societies, undertakings or persons, respecting the attainment of their objects—and particularly such as relate to the collective conditions of labour;
>
> (10) Exercise before any court of law all the rights of their members with respect to acts directly or indirectly prejudicial to the collective interest of the profession which they represent.[5]
>
> 11. The funds of the special mutual benefit and pension accounts shall be unseizable save for the payment of the annuities and benefits to which a member of the syndicate may be entitled.

---

[1] Translated from Legislation Syndicale à l'Etranger et au Canada par Simon Lapointe, *Semaine Sociale du Canada*, deuxième session, Quebec, 1921, à p. 231.

[2] Moved by member for Westmount and seconded by member for Montreal. Strike of garment workers in Montreal, November-February, 1921-22, was reported to be accompanied by violence on part of strikers as in *Rother v. International Ladies' Garment Workers' Union*, *infra pp. 89-90.*

[3] *Journals, Legislative Assembly*, Quebec, 1922, at p. 325.

[4] As amended, 1930-31, c. 98 and 1932, c. 87.

[5] As amended, 1930-31, c. 98, s. 1.

13. Unions and federations of professional syndicates shall enjoy in their own sphere, all the rights and powers conferred by this act upon professional syndicates and especially those provided for in subparagraph (1) of the second paragraph of section 6.[1]

They may, in addition, institute councils of conciliation and arbitration between the syndicates which shall, at the request of the interested parties, render decisions upon the disputes submitted to them. Such decision shall be submitted to the Superior Court for homologation, and, after the judgment confirming them, shall have the force of a final judgment and be executory in the manner provided for the execution of judgments of the said court.

14*a*. If it be stipulated in any contract that workmen, or the members of the syndicate, union or federation of syndicates shall receive a stated wage, such workmen or members, although not a party to the contract, are entitled to the rate of wages therein stated, notwithstanding any renunciation thereto afterwards agreed upon by them, whether express or implied.[2]

20. The groups who may appear before the courts and who are parties to the collective labour agreement may exercise all rights of action arising out of such agreement in favour of each of their members, without having to establish a transfer of claim by the person interested, provided that the latter has been advised and has not declared that he was opposed thereto. The person interested may intervene at any time in the proceedings taken by the group.

Whenever an action arising out of the collective labour agreement is brought by person or by a group, the other groups with authority to appear before the courts, whose members are bound by the agreement, may intervene at any time in the proceedings taken, on the grounds of the collective interest which the result of the litigation may have for their members.[3]

Under the Bill as introduced in the Legislative Assembly, a federation of syndicates could set up a council of arbitration to which disputes might be submitted by the parties and when so submitted the award was to be referred to the Superior Court for homologation and, if confirmed, they were to become binding in law. This clause was amended by the Committee on Public Bills to restrict the authority of a council of arbitration to disputes between unions, not between employers and employed. The committee recommended that in the case of labour disputes, recourse should be had to the machinery provided by the Dominion and Quebec statutes on concilation and arbitration.[4]

It appears from the above sections of the Professional Syndicates Act that this enactment places trade unions in Quebec in a quite different position from that in the rest of Canada. Not only may trade unions, on depositing their constitutions and rules with the Provincial Secretary and on obtaining the approval of the Lieutenant-Governor in Council be given a limited incorporation, or become quasi-corporations, with the right to sue and be sued, but the written collective agreements made with employers regarding working conditions are enforceable in the Courts. Wages determined by the agreement apply to all workmen on the job whether members of the union or not, and whether parties to the contract or not, if it is so stipulated in the agreement. Thus a minority

[1]Ibid., s. 2.
[2]Ibid., s. 3, English edition of the Statutes of Quebec. In the French edition, the English words "such workmen *or* members" are rendered "ces ouvriers *et* ces membres."
[3]As amended, 1930-31, c. 98, s. 4.
[4]*L'Action Catholique*, Quebec, March 6, 1924.

which is not a party to a collective agreement is bound by the common rule as to wages, or, to state it in another way, a workman not a member of the union or ignorant of the terms of the collective agreement, is protected and the employer prevented from paying lower wages to a few workmen than the rate agreed upon with the union. Further, judicial interpretation of section 14*a* does not confine the words " any contract " to any collective agreement between an employer and his employees although in one case the judge gave it as his opinion that since the Act was one dealing with trade unions and collective agreements the word " contract " should be restricted to a collective agreement.[1] In another case, the judge remarked:

> If this amendment is to be read as including all classes of workmen as well as those who are members of syndicates there is no doubt that it is a direct derogation of the general principle of law as enunciated by our Civil Code regarding the general liberty of parties to contract.[2]

Another notable feature of the Act is that it gives to a trade union complying with it the right to represent its members before Courts of law and to claim damages in their names in matters affecting their collective interest. This appears also to be in derogation of another maxim of French law—that none may plead in the name of another.[3] The above summary of the act relates to its provisions as amended from time to time, judicial interpretation of the original act having led to some changes.

As we have seen, a collective agreement in English law is not a legal contract, but a " memorandum of usage," a statement of the working conditions mutually agreed upon by the employers and trade unions in the industry concerned. As a French writer puts it:

> It may be said that a labour contract contains scarcely any element of contract; the collective agreement is a law imposed unilaterally by the industrial association on the industry.[4]

While in France collective bargaining has not been so long established nor so widely used as in Britain, yet the practice was greatly extended during the war largely through encouragement by the Government in order to facilitate production. Collective agreements were enforced, too, by some Courts as contracts between the parties while the legal recognition of clauses in these agreements providing for a closed union shop affected in some measure workmen outside the union.[5] In 1919, these decisions were supported by a statute which laid down regulations for collective agreements and empowered duly constituted associations to institute proceedings in their own names or in favour of their members against any persons violating a collective agreement. In the following year, the Industrial Associations Act, amending an Act of 1884, extended the rights of trade associations and made more explicit their right to sue in respect of any matters likely to injure the collective interest of the trade. An amend-

[1] Denis J. in *Bilodeau v. Loranger et Cite de Montreal*, (1933) Q.R. 71 S.C. 180.

[2] Stackhouse, J. in *Jensen v. Grimstead & Son, Ltd.* Q.R. (1932) 70 S.C. at p. 202.

[3] Art. 81, Code of Civil Procedure of Quebec. See Picard, Roger, Labour Legislation in France during and after the War, *International Labour Review*, July-August, 1921, p. 37. See also reference to representative actions in judgment in *Society Brand Clothes Ltd. v. Amalgamated Clothing Workers of America*, *supra*, p. 33.

[4] Cruet, Jean, *La Vie du Droit et L'Impuissance des Lois*, Paris, 1908.

[5] Pirou, Gaetan, The Theory of the Collective Labour Contract in France, *International Labour Review*, January, 1922.

ment to permit a collective agreement to be made binding on the whole trade, that is, on employers and employees not parties to the agreement, failed to pass. At the same time, a Bill was brought in to provide for compulsory arbitration of labour disputes involving certain classes of public utilities. This last measure was rejected largely owing to the opposition of organized labour.

So it appears that the Professional Syndicates Act was inspired by the laws of France regarding industrial associations and collective agreements. The common law of England is in force in all the provinces of Canada except Quebec. In the latter province, the civil law of France has prevailed and in its interpretation and modification by statute, the Courts and Legislature took primarily to French law.

Several cases have come before the Quebec Courts involving the Professional Syndicates Act. In 1928, an action for damages, brought by the Building Trades Council of the Catholic Unions of the City of Quebec on behalf of some of its unemployed members,[1] was based on the clause in the contract between the building contractor and the parish authorities stipulating that as far as possible employment should be given to members of the Catholic Unions. The claim was upheld by the Superior Court. The costs of the action as well as the sum of the relief funds paid by the union to its unemployed members were awarded to the union. On the other hand, the claim of the union for the loss sustained individually by certain of its members was refused on the ground that the right of action in individual cases belonged to the members, not to the union.[2] On appeal, the judgment as to the validity of the clause in the contract giving preference to members of the Catholic Unions was reversed and damages refused. Under Article 1029 of the Civil Code a party "may stipulate for the benefit of a third party when such is a condition of the contract." But, in the opinion of the Court, the article does not apply when the persons to be benefitted are undetermined. It could not be said that the plaintiffs, although members of the Catholic Unions, had the right to demand that they in particular should be employed.

In October, 1930, in a claim by a workman for wages at the rate stipulated in the contract between the employer and the City of Quebec instead of at the rate agreed upon between the workman and the employer, the claim was disallowed.[3] The chief magistrate of the district held that if a workman was hired at a wage agreed upon between himself and the employer, he could not later claim payment at the higher rate fixed in a contract to which he was not a party. If the workman accepted the lower rate through ignorance of the rates fixed by the City in its contract he might take steps to cancel his agreement on learning of the provision for higher wages but the employer would be free to hire or not to hire him. This decision affected about forty similar cases before the same Court. The magistrate expressed his reluctance in coming to such a conclusion in view of the violation by the defendant of the wages schedule in his contract with the City of Quebec but considered that "the actual condition of our labour legislation—still in process of being formed—does not permit me to find a solution which the common law had not sufficiently foreseen or favoured.[4]

[1] *Building Trades Council of Quebec v. Ignace Bilodeau, Ltd.* S.C. May 8, 1928 (not reported) and (1929) Q.R. 46 K.B. 422.

[2] For discussion of this case, see Fontaine, Paul, Droit Syndical, *La Revue du Droit*, mai, 1928 et avril, 1929.

[3] *Juneau v. Plamondon et Cité de Québec* (1931) Q.R. 69 S.C. 327.

[4] At p. 337, translated.

At the next session of the Legislature, the Professional Syndicates Act was amended to provide that " if it be stipulated in any contract that workmen or the members of a syndicate " shall receive a standard wage, " such workmen or members although not a party to the contract," are entitled to the rate of wages specified notwithstanding any renunciation afterwards agreed upon by them.[1] Several actions have since been brought by workmen to recover wages alleged due in accordance with a contract between an employer and the City of Montreal. These cases arose also from the alleged violation of the " fair wages " schedule embodied in building contracts let by civic authorities. In each case, the Court seems to have conceded, at least to members of a syndicate, a right of action with respect to such a contract under section 14*a* of the Act but there was some difference of opinion among the judges of the Superior Court as to whether workmen who were not members of a syndicate could bring such an action. In one case, a judge of the Superior Court for the District of Montreal held that section 14*a* included all classes of workmen, whether they were members of a syndicate or not and

> that in virtue of this article the plaintiff is entitled by law to the rate of wages fixed in the contract between the Protestant Board of School Commissioners and the defendant in the same manner as if he had been a party to the contract.[2]

In a second case the Court considered

> that it would modify fundamentally the economy and import of the said law applying to syndicates only to declare that because of the new s. 14*a* it applies now to " workmen " taken individually and independently of their membership in a syndicate . . . that the Professional Syndicates Act had never had any other object than that of association of persons pursuing the common good of their members and not that of individuals pursuing a personal interest and that in interpreting the aforesaid amendment one must presume that the Legislature did not wish to change the object of the law unless such intention be expressed clearly and beyond doubt.[3]

It was held, therefore, that the Act did not give right of action to a workman who was not a member of a syndicate. In a similar case[4] a few weeks later, the judge referred to these contradictory judgments. He considered that individual workmen had a right of action whether members of a syndicate or not. Further, he held that

> it is wrong to maintain that in this case the right of action belongs to a syndicate. The syndicate can bring an action only on a collective labour agreement. This article 14a is thus a new law and it is concerned in no way with syndicates. It is not the syndicate but the member of the syndicate or the workman who alone can avail himself of this provision.....Without article 14a, only the city could have sued the employer, to-day the right belongs to the workman; it belongs to him not by virtue of an agreement but as a legal right.[5]

---

[1] 1930-31, c. 98, s. 3 adds section 14a to the Act. The wording above is that of the English edition of the statutes. In the French edition the second part of section 14a reads: "ces ouvriers *et* ces membres bien qu'ils ne soient pas partie au contrat."

[2] Stackhouse, J., in *Jensen v. Grimstead & Son, Ltd.*, (1932) Q.R. 70 S.C. at p. 203.

[3] Denis, J., in *Bilodeau v. Joseph Loranger et Cité de Montréal* (1933) Q.R. 71 S.C. at p. 182. (translated).

[4] *Corbeil v. Cadieux* (1933) Q.R. 71 S.C. 188.

[5] Demers, J. at p. 189 (translated)

Later, in June, 1933, two claims of a similar sort were heard in the Superior Court at Montreal. In both cases, the claims were allowed, the judgments appealed and confirmed by the Court of King's Bench in June, 1934.[1] These decisions appear to settle definitely the meaning of section 14a. The plaintiffs contended that they were employed on certain classes of work that, according to the contracts between the employers and the City of Montreal, should have been paid for at higher rates than they had received. On this point, they were upheld by the Court. As to the first ground of appeal, that the respondents, not being parties to the contracts, were not entitled to invoke their provisions, the five members of the Court of King's Bench were agreed that the contention was not well founded. Bond, J., distinguished the cases before them from *Bilodeau v. Building Trades Council of Quebec*,[2] in which the Court had held that a party could not stipulate in a contract with another for the benefit of a third party where the third party remained undetermined. In the claims for wages before the Court, the parties were determined by their employment and under Article 1029 of the Civil Code the stipulation in the contracts for the benefit of those to be employed by the contractors was valid. They had therefore right of action and on this ground alone it was held that the appeals should be dismissed. The plaintiffs, however, had invoked section 14a of the Professional Syndicates Act and, in the opinion of the trial judge, the section applies equally to workmen who are not members of a trade union and to those who are. This opinion was confirmed by the higher Court. Bond, J., stated:—

> In my opinion, it is impossible to overlook the plain terms of the Act now in question, which expressly stipulates that it shall be for the benefit of workmen, or the members of a syndicate. The apposition of terms is too striking to be overlooked, and, moreover, as I have already intimated, it does not constitute a striking departure from the principles of the civil law contained in article 1029 C. C. As a consequence, I reach the conclusion that this ground of defence cannot be entertained.[3]

In 1933 when the Plasterers' Association of Montreal sued on behalf of its members, and of some who were alleged to be no longer members, for wages alleged due under the terms of a collective agreement between the employer and the union, the decision was in favour of the union.[4] The defendant claimed that the workmen had accepted lower wages than those stipulated in the agreement since rates of wages generally had fallen since the agreement was made and, further, that the union could not sue on behalf of those who were no longer members, not having paid their dues to the union. The judge based his opinion on the rights conferred on trade unions registered under the Act by the amendments made in 1931, that is, on the provisions of section 6 (10), 14*a* and 20 of the principal Act as quoted above.

A notable development in Quebec law regarding trade unions is that of the Collective Labour Agreements Extension Act, 1934, which has been dealt with earlier in this Bulletin.[5]

---

[1] *Dufresne Construction Co. v. Dion* and *Duranceau v. Dodge* (1934) Q.R. 57, K.B. 132 and 147, respectively.
[2] *Supra*, p. 76.
[3] At p. 136.
[4] *L'Association des Plâtriers de Montréal v. Tessier*, C.S. January 31, 1933, (not reported).
[5] *Supra*, p. 61.

Industrial Conditions Act of Manitoba

In 1919, the Manitoba Legislature enacted the Industrial Conditions Act[1] providing for the appointment of a joint council of five members, two members representing employers and two representing workers, with an impartial chairman, to conduct inquiries into matters affecting labour and, at the request of parties to a dispute, to act as a board of arbitration. The Joint Council of Industry held its first meeting on May 12, 1920. For two years the Council was active in settling labour disputes, but at the 1922 session of the Provincial Legislature, the appropriation for the expenses of the Council was so reduced as to make the Act inoperative. From that time until 1933 no action was taken under it. In November, 1933, a council of five members was appointed by the Manitoba Government under the Industrial Conditions Act and the Manitoba Evidence Act to investigate and report on matters in dispute between the Winnipeg Electric Company and its employees in regard to rates of pay, hours of labour and other working conditions.

The significance of the Industrial Conditions Act in a study of trade union law in Canada lies in the last three sections as enacted in 1920. To the original Act of 1919 was appended a schedule which was to come into operation and apply to labour disputes on public notice to that effect by the Joint Council. This schedule set forth four rules of law taken from the Trade Disputes Act, 1906, of the United Kingdom. Their purpose was to free trade unions from civil liability for conspiracy for acts done in furtherance of a labour dispute and their members from liability for interfering with another's business or for inducing breach of contract if such acts were done in furtherance of a labour dispute, to prohibit actions against unions for tort and to permit picketing in order to persuade others not to work. But the aftermath of the general strike which occurred in Winnipeg in 1919 shortly after the statute was passed, made its operation difficult and the schedule was not declared in force. In 1920, it was replaced by three sections declaring the right of employers and employees to organize for any lawful purpose and the right to bargain individually or collectively, provided that any dispute as to the method and terms of such bargaining should be submitted to the Joint Council of Industry.

In *Chase v. Starr*[2] in 1923, Perdue, C.J., and Dennistoun and Trueman, JJ., of the Manitoba Court of Appeal referred to the Industrial Conditions Act as manifesting the public policy of Manitoba towards trade unions and collective bargaining.

Trade Unions Act of British Columbia

British Columbia is the only other province in which the Legislature has enacted a statute dealing with trade unions and it was the first to do so. From July to November, 1901, about 1,000 miners at Rossland, B.C., organized as a local of the Western Federation of Miners, were on strike ostensibly for higher wages for certain classes of workers but the unwillingness of the Le Roi Mining Company to recognize the union at Rossland and at its American plant appeared

[1] *Consolidated Amendments of Manitoba*, 1924, c. 92.
[2] (1923) 3 W.W.R. at pp. 513, 522 and 542 respectively.

to be a serious cause of difference. In October, the company sued for damages and for an injunction to restrain local unions from watching and besetting the homes of workmen and the Canadian Pacific Railway station at Rossland and elsewhere in British Columbia for the purpose of persuading persons not to work for the company and to restrain the unions from procuring other persons whom the company had brought to Rossland to break their contracts. Damages of $12,500 and costs were awarded and a receivership appointed to take over the funds and other property of the union.[1] A restraining order was issued in the same terms as the injunction granted in England in September, 1900, by Farwell, J., in the *Taff Vale* case, and approved by the House of Lords in July, 1901.[2]

Following this decision in British Columbia, as following the *Taff Vale* case in Britain, protests were made regarding the law relating to trade unions. At the 1902 session of the Legislature of British Columbia two Bills were introduced to amend the law. A Bill[3] respecting actions against trade unions and kindred associations was similar to a Bill introduced in the same year in the British House of Commons. A clause in this Bill provided that no trade union was to be liable in damages for any wrongful act in connection with a labour dispute unless such act had been authorized or concurred in by the members of the union or by its officers acting within their powers under the rules of the union. This Bill was rejected but in the meantime another Bill was brought in to amend the law relating to trade unions[4]. The latter as amended in committee to include a clause similar to that referred to above in the first Bill was passed in June, 1902, and remains on the statute-books as the Trade Unions Act of British Columbia.[5]

An amendment which failed to pass would have required all trade unions in British Columbia to register under the Dominion Trade Unions Act. In opposing this amendment the sponsors of both the Bills relating to trade unions expressed doubts as to the competence of the Dominion Parliament to enact legislation regarding trade unions.[6]

The Bills introduced in the British House of Commons in 1902 were defeated and it was not until 1906 that Parliament remedied the situation revealed by the *Taff Vale* decision by enacting the Trade Disputes Act. There is considerable difference between this statute and the British Columbia Act of 1902. Except in the fourth section, the former deals with acts done "in contemplation or furtherance of a trade dispute."[7] The first section declares such acts by two or more persons not to be actionable, if they would not be actionable if done by one person. This section thus amends the law of conspiracy by prohibiting actions for damages on the ground of conspiracy to injure. There is

[1] *Le Roi Mining Co., Ltd., v. Rossland Miners' Union* (1901) 8 B.C.R. 370; 9 B.C.R. 531 and *The Labour Gazette*, vol 5, p. 433.

[2] (1901) A.C. 426, *supra*, pp. 27-31

[3] Bill 10.

[4] Bill 80.

[5] R.S. of British Columbia, 1924, c. 258. The Trades and Labour Congress of Canada petitioned for similar legislation in Quebec and Ontario; see its *Proceedings*, 1903, pp. 23, 25 and 46.

[6] Mr. Joseph Martin "was very doubtful as to the jurisdiction of the Dominion Parliament with regard to trade unions." Mr. Smith Curtis thought "the Dominion had no right to assume jurisdiction over trade unions." *Victoria Colonist*, June 20, 1902.

[7] The Trade Disputes and Trade Unions Act, 1927, declares certain strikes and lockouts illegal and the provisions of the 1906 Act do not apply to any act done in furtherance of a strike or lockout illegal under the 1927 Act.

no similar provision in the British Columbia statute. The second section of the English Act declares picketing by one or more persons for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working to be lawful. Section 3 declares acts in furtherance of a trade dispute not to be actionable on the ground only that they interfere with another person's business or induce another person to break a contract of employment. Finally, section 4 prohibits Courts entertaining any action against a trade union or its representatives for wrongs alleged to have been committed by or on behalf of the trade union but the section does not affect the liability of the trustees of a registered union, under section 9 of the Trade Union Act, 1871, with respect to the property of the union except in the case of tortious acts committed by the union in furtherance of a trade dispute.

The Trade Unions Act of British Columbia confers on trade unions freedom from liability for wrongful acts, duly authorized or concurred in by the union or members, only if they are committed by the members in connection with a labour dispute. Section 2 stipulates that a union or its officers shall not be enjoined from, nor be liable in damages for, communicating facts respecting any employment or for persuading by fair and reasonable argument, without unlawful threats or intimidation or other unlawful acts, any person not to renew a contract of employment or not to enter into a contract of employment. Section 3 gives the same immunity with regard to the publishing of information concerning a strike or lockout or labour dispute and to the warning of persons not to seek employment in any locality affected by a labour dispute.

From 1902 until 1926, no actions appear to have been instituted in British Columbia for damages against trade unions in which the statute of 1902 came before the Court. In May, 1926, however, in a suit for damages and for an injunction against the picketing of a theatre in Vancouver by the local union of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators,[1] the defence relied in part on the provincial Trade Unions Act. But Gregory, J., found that the defendants' intention was to injure the plaintiff and that the union was not protected by the Trade Unions Act of British Columbia. An order was issued enjoining the distribution of hand-bills stating that the theatre was "unfair to organized labour" or the display of banners or placards bearing the same statement.

> The distribution by a trade union of pamphlets at the door of a theatre and displaying of advertisements thereabouts stating not facts but matters of opinion is not protected by the Trade Unions Act and is a watching and besetting contrary to the Criminal Code and the theatre proprietor may recover damages from the union for such unlawful acts.[2]

On appeal, this decision was affirmed on an equal division of the Court.[3] Macdonald, C.J., and McPhillips, J., agreed with the trial judge while M. A. Macdonald, J., and Martin, J., would have allowed the appeal. Macdonald, C. J., held that

[1] *Schuberg v. Local 118, International Alliance of Theatrical Stage Employees and Moving-Picture Machine Operators* (1926) 3 D.L.R. 166.
[2] Ibid., headnote.
[3] (1927) 2 D.L.R. 20.

> Even assuming that they conducted themselves in a peaceful manner, the question is, had they the right to bring about what was virtually a boycott of the plaintiff. The defendants' object in distributing the handbills and in parading with banners, was unquestionably to prevent persons from patronizing the theatre. No matter how peaceably this may have been done, and even admitting the absence of actual malice, yet I think it was an actionable wrong done by these defendants, in combination, with the object of compelling the plaintiff by inflicting loss upon him to do something from which he had a legal right to abstain from doing. The case falls clearly within the principle of *Quinn v. Leathem* (1901) A.C. 495.[1]
>
> The Trade Unions Act of this Province, chap. 258, R.S. B.C. does not assist the defendants. It would protect them only against civil liability for the act of communicating information to workmen concerning the hiring with the employer and against liability for "persuading or endeavouring to persuade by fair and reasonable argument without unlawful threats, intimidation or other unlawful acts," and against liability for warning workmen against seeking employment from the recreant employer. It does not protect them from liability for conspiring to injure the employer in his business and from intentionally injuring him.[2]

Martin, J., on the other hand, stated:

> The conclusion I have reached after a lengthy consideration of the matter is that the defendants are justified in what they did by said section 3, apart from their additional invocation of section 2, and I prefer to base my opinion on our statute which is not the same in important respects as the English statutes and is more favourable to the defendants than they are, but even if they were identical the general and main effect of the many English cases which have been cited and which I shall not attempt to review (because as Lord Dunedin says in *Sorrell v. Smith*, "it would be an impossible task to reconcile either the decisions or the dicta") would be to sustain in my opinion the clear and able submission of the appellants' counsel.[3]

McPhillips, J., said:

> What was done here was in my opinion the invasion of a legal right. The respondent had the right to carry on his business without unlawful interference and what the appellants have been found liable for is this—the unlawful interference with the respondent in the exercise of his legal rights.[4] . . . . Here we have the appellants admitting that they did the acts complained of and still maintaining their right in doing them and attempt- to escape liability by pleading the statute—the Trade Unions Act. It was incumbent upon the appellants, as the onus was upon them, to establish that they were protected by the terms of the statute. That they failed to do.[5]

Macdonald, J.:

> In my opinion this appeal is determined by deciding whether or not the acts complained of on the part of the appellants are within sections 2 and

---

[1]In *Quinn v. Leathem*, an action for tort and conspiracy, the House of Lords held that the terms of the Conspiracy and Protection of Property Act, 1875, s. 3, which exclude indictments for conspiracy, left unaffected the civil remedy for conspiracy, and they found that in the case before them the defendants were civilly liable as for conspiracy. In this case there was the element of procuring to break contract and that is a tortious Act in itself, "but the dicta of *Quinn v. Leathem* show clearly that there might be an action for damages based on any conspiracy to injure or to do harm . . . . ." (Report of Royal Commission on Trade Disputes and Trade Combinations, 1906, pp. 12-15).

[2]As pointed out above, s. 1 of the English Trade Disputes Act, 1906, prohibits actions for conspiracy to injure against workmen acting in furtherance of a trade dispute.

[3]At p. 27.

[4]A quotation from *Quinn v. Leathem* follows.

[5]At p. 36.

> 3 of chapter 258, R.S. B.C. 1924, an Act relating to trade unions. If on the facts disclosed, the appellants enjoy immunity under the Act, that ends the matter. Little assistance is obtained from decisions on information laid arising out of similar or somewhat similar conduct on the part of strikers under section 501 of the Criminal Code. The provincial Trade Unions Act is *intra vires* and the federal Act (section 501) does not purport to declare that acts relating to the exercise of civil rights which are legalized by sections 2 and 3 of the provincial Act are criminal.[1] . . . . I have considered the authorities to which we were referred but do not feel that it is necessary to add anything further, except to say that I do not find that the acts complained of were accompanied by unlawful threats or intimidation, nor do I think (without discussing whether or not the element of malice is an ingredient) that acts performed pursuant to legislative permission should be regarded as done maliciously. I would allow the appeal.[2]

Before the decision on the appeal case was given, the theatre involved in this dispute had been taken over by a new management and was being operated as a union theatre. This result of the strike combined with consideration of the cost of appeal to a higher court and the general belief of trade unionists that the Dominion law on picketing should be amended led to the decision not to appeal the judgment further but to urge a change in the section of the Criminal Code dealing with picketing.

There was a similar division of the British Columbia Supreme Court in October, 1933, in an appeal on a stated case against the conviction of two union officers for picketing a moving-picture theatre in New Westminster.[3] One member of the Court thought the appeal should be allowed and the conviction quashed on the ground that the British Columbia Trade Unions Act conferred on trade unionists exemption from civil liability for communicating information respecting employment or endeavouring "to persuade by fair and reasonable argument without unlawful threats, intimidation or other unlawful acts" any other person not to continue work or to take up work. This statute, he considered, might be regarded as "the lawful authority" referred to in section 501 of the Criminal Code.[4] No other cases have involved an interpretation of the Trade Unions Act of British Columbia.

PICKETING

In the British Columbia cases above, damages were sought from the defendant trade unions for the loss alleged to have been sustained by the plaintiffs as a result of the besetting or watching of their places of business by the members of the union with a view to persuading others not to patronize the plaintiffs' theatres. In the Courts' opinion, picketing as carried on by the defendants was besetting or watching as prohibited by the Criminal Code. Section 501 of the Code, as amended in 1934, reads:—

> Every one is guilty of an offence punishable on indictment or on summary conviction before two justices and liable on conviction to a fine not exceeding one hundred dollars or to three months' imprisonment with or without hard labour, who, wrongfully and without lawful authority, with a

[1] At p. 38.
[2] At p. 41.
[3] *R. v. Richards and Woolridge*, (1934) 2 W.W.R. 390, *infra*, p. 000.
[4] Martin, J., at p. 193.

view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain,

(*a*) uses violence to such other person, or his wife or children, or injures his property; or

(*b*) intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or

(*c*) persistently follows such other person about from place to place; or

(*d*) hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or

(*e*) with one or more other persons, follows such other person, in a disorderly manner, in or through any street or road; or

(*f*) besets or watches the house or other place where such other person resides or works or carries on business or happens to be;

(*g*) attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

Earlier in this Bulletin, it was pointed out that the proviso in (*g*) above was enacted first in 1876 but was omitted from the statute when the criminal law was codified in 1892. It was replaced as subsection (*g*) in 1934.[1] At the same time, the words "at the option of the accused" inserted after the word "punishable" in 1905[2] were repealed. Annually from 1921 to 1934 the legislative program presented to the Dominion Government by the Trades and Labour Congress contained a request for the re-enactment of the qualifying clause omitted from the Criminal Code.[3] The All-Canadian Congress of Labour also advocated legislation to amend the Criminal Code "to legalize peaceful picketing.[4] The amendment of 1934 was made in response to these demands.

In Britain, a similar section was included in the Conspiracy and Protection of Property Act, 1875, from which the Canadian clause of 1876 was drafted but following judicial decisions to the effect that attending at or near a place of business for the purpose of *persuading* others was not permitted under the statute, the proviso was repealed by the Trade Disputes Act, 1906. By section 2 of this statute it was enacted:—

(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

---

[1] *Statutes of Canada*, 1934, c. 47, s. 12.
[2] Ibid., 1905, c. 9, s. 3.
[3] Trades and Labour Congress, *Proceedings*, 1917, pp. 102-107, and 1921-32.
[4] *The Labour Gazette*, December, 1929, p. 1360.

The greater freedom conferred by the 1906 Act was considerably curtailed, however, by the Trade Disputes and Trade Unions Act, 1927, passed as a result of the general strike of 1926.[1]

In leading Canadian cases, the Courts have cited the English decisions in *Lyons v. Wilkins*[2] or *Ward, Lock & Co. v. Operative Printers' Assistants' Society,*[3] both of which were decided before the passing of the Trade Disputes Act, 1906. In their relation to Canadian cases, it should be borne in mind that the English law on picketing as laid down in the Conspiracy and Protection of Property Act, 1875, and in force until 1906, was similar to Canadian law as it now stands following the amendment of 1934. *Lyons v. Wilkins* turned only in part on picketing but on that point the Court held that the plaintiffs were entitled to a perpetual injunction to restrain the defendants from watching and besetting for the purpose of persuading. The appeal against this decision was dismissed.

> To watch or beset a man's house, with a view to compel him to do or not to do that which it is lawful for him not to do or to do is, unless some reasonable justification for it is consistent with the evidence, a wrongful act: (1) because it is an offence within s. 7 of the Conspiracy and Protection of Property Act, 1875; and (2) because it is a nuisance at common law, for which an action on the case would lie; for such conduct seriously interferes with the ordinary comfort of human existence and the ordinary enjoyment of the house beset.[4]

On the other hand, Vaughan-Williams, L.J., considered that picketing, if free from the element of conspiracy, might or might not be an actionable nuisance at common law according to the circumstances. This latter view appears to have been the one accepted in the *Ward, Lock* case in 1906.

> The facts of this case were similar to those in *Lyons v. Wilkins,* except that though there was nothing to show that the pickets tried to persuade workmen there was proof that the object of posting pickets had been to persuade workmen to join the union and strike by giving proper notices, so as to force the masters to employ only trade unionists.[5]

It was held unanimously that these acts were protected by the proviso to the "watching and besetting" clause and that no common law nuisance was proved. As to the effect of the proviso, it was declared:

> It expressly excepts a sub-class of acts (which otherwise might be held to be within the class specified in subsection 4) from the operation of the section, i.e. it does not attach the additional penal consequences to acts which come within that sub-class. It leaves them exactly as they were before. If they were civil torts, they remain so. If they were previously criminal in their nature, their criminality and its punishment are unaffected by the section. In thus restricting the application of the section to acts in themselves wrongful I am following the high authority of Lord Justice Lindley in his well-known judgment in the case of *Lyons and Sons v.*

---

[1]By the 1927 Act, s. 3, picketing in such numbers or in such a manner as "to be calculated to intimidate" any person was declared unlawful and "to intimidate" was defined as "to cause in the mind of a person a reasonable apprehension of injury to him or his family or damage to property or business." Further, watching or besetting any place where a person *resides* for the purpose of inducing any person to work or abstain from working was declared unlawful "notwithstanding anything in any Act."

[2](1896) 1 Ch. 811; (1899) 1 Ch. 255.

[3](1906) 22 T.L.R. 327.

[4]Lindley, M. R. and Chitty, L. J., (1899) headnote.

[5]Hedges & Winterbottom, *Legal History of Trade Unionism*, London, 1930, p. 126.

Wilkins (1899) 1 Ch. 255. But he arrives at it in a different way. He construes the work "compel" in the opening words of the section in such a sense as to make the act of compelling wrongful in itself, and therefore considers the presence of the word "wrongfully" as superfluous, or at least as only an indication of the phraseology to be used by the pleader. I see no reason why we should treat so lightly a word of such importance. In my opinion, the Legislature inserted the word "wrongfully" expressly, because it did not intend to leave this all-important limitation of the ambit of the clause to the chance that a Court might construe the word "compel" in such a restricted sense. And the course of the arguments in the present case convinces me that the Legislature was prudent in so doing. Throughout the discussion the defendants have been described as seeking to "compel" the plaintiffs to pay union wages and to employ union men because they tried to get all the operatives they could into the union, so that the plaintiffs would find no non-union men to employ. If this be a proper use of the word "compel," it certainly carries with it no wrongful character . . . . It is inaccurate to say that the masters have a right to employ men on any specific terms. They have only a right to employ such, if any, as are willing to accept those terms, and no wrong is done them by any one who by lawful means lessens the number of those willing to accept them. The right of the plaintiffs to try to persuade a man to accept and the right of the defendants to try to persuade a man to refuse appear to me to be rights of freedom of individual action equally lawful and equally deserving of the protection of the law, so long as the means employed are lawful and right. Both become unlawful if the means employed are wrongful. I am therefore of opinion that in support of the plaintiffs' claim with regard to picketing, it must be shown that the defendants or one of them were guilty of a wrongful act, i.e., that the picketing constituted an interference with the plaintiffs' action wrongful at common law, or, as I think it may accurately be phrased, were guilty of a common law nuisance.[1]

The *Ward, Lock* case was decided by the Court of Appeal about the time the report of the Royal Commission on Trade Disputes and Trade Combinations was issued. In the section of their report on picketing the Commissioners point out that in their opinion:

> What it comes to is this, that watching and besetting for the purpose of peaceably persuading is really a contradiction in terms. The truth is that picketing—however conducted—when it consists of watching or besetting the house, etc., and it is to be observed that the statute places no limit to the number of persons attending for the purpose only of obtaining or communicating information or to the length of time during which such attendance may be maintained—is always and of necessity in the nature of an annoyance to the person picketed. As such, it must savour of compulsion, and it cannot be doubted that it is because it is found to compel that trade unions systematically resort to it. It is obvious how easy it must be to pass from the language of persuasion into that of abuse, and from words of abuse to threats and acts of violence. A considerable proportion of the cases of physical violence which occur during times of strike arise directly or indirectly out of picketing. At the same time all the witnesses admitted that the real vice of picketing consisted in ilegal intimidation, that is to say, in producing in the mind of a person apprehension that violence would be used to him or his wife or family or damage be done to his property, and some witnesses thought that picketing by one or two persons could not produce any injurious effect. It must be remembered that, if picketing

[1]Moulton, L. J. at p. 329, with whom Vaughan-Williams and Stirling, L. JJ. agreed.

amounts to a nuisance, it can be restrained by injunction, and that a trade union which authorises the nuisance can be made liable in a civil action. Moreover, the consideration that the right to strike, which, when not accompanied by breach of contract, tort, or crime, is legal, and indeed is conceded by nearly all employers to be within the rights of workmen, carries with it in our judgment as a corollary the right to persuade others to do the same. We therefore think that this right could be safeguarded, and at the same time the oppressive action of picketing struck at if the watching-besetting clause with its proviso were struck out, and instead thereof another subsection (which would also supersede subsection 1) inserted, "acts in such a manner as to cause a reasonable apprehension in the mind of any person that violence will be used to him or his wife or family, or damage be done to his property.[1]

The terms of this recommendation were not carried out, however. Section 2 of the Trade Disputes Act, 1906, quoted above, was based on a Bill put forward by the trade unions in 1905.[2]

In English law, a nuisance may be an offence at common law or under a particular statute dealing, for instance, with public health. A nuisance is defined in common law but not in the statute law of England. The common law definition has been incorporated in the Criminal Code of Canada, section 221:

> An unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects.

There have been many Canadian cases before magistrates and several before higher Courts in which picketing as carried on in connection with particular strikes has been held to be a nuisance. In other cases it has been considered to be the offence of "watching and besetting" under section 501 without reference to the common law. Where picketing is conducted in such manner as to become trespass or an unlawful assembly, it is, of course, a violation of the law. Where it "intimidates or interferes with another's business" there has been considerable difference of opinion as to its legality and as to what constitutes intimidation or unlawful interference.*

In 1911 in a Manitoba case, in which the trial judge had remarked that with one solitary exception only peaceable persuasion was used to induce men to quit work or not to begin work, it was held by the Court of Appeal that:

> the picketing or besetting of the plaintiffs' shops with the object of coercing employees or inducing them to cease working is also unlawful.[3]

In another action[4] about the same time, Mathers, J., who had tried the earlier case and whose decision had been upheld on appeal, said:

> I find that the defendants, with the exception of those whom I shall subsequently mention, conspired together to picket the plaintiff's works by watching and besetting for the purpose of inducing or procuring men who had continued to work to cease working, of preventing any of those who had struck work or had been locked out from returning to work and of preventing any others who might be willing to take employment with the plaintiff to comply with their demands.

---

[1] Report, 1906, pp. 11-12.
[2] Ibid., p. 11.
[3] Perdue, J. in *Cotter v. Osborne*, C.R. (1911) A.C. at p. 157. See *supra*, p. 34
[4] *Vulcan Iron Works v. Winnipeg Lodge No. 174*, (1911) 21 Man. L.R. 473.

* KENNEDY & FINKELMAN – "RIGHT TO TRADE"

There is no doubt the ultimate object of the men was a perfectly lawful and even commendable one, namely, the improvement of their own position, and the only question to be decided here is whether or not, in the pursuit of that lawful object, they resorted to practices that the law forbids. . . .The Imperial Conspiracy and Protection of Property Act, 1875, section 7, from which the above section is modelled, contains a proviso not found in our Act, that attending merely to obtain, or communicate, information shall not be deemed watching and besetting. The section itself and this proviso have received an interpretation by the Court of Appeal in England in two cases—first in *Lyons v. Wilkins*, and more recently (in 1906) in *Ward v. Operative Printers*. In the former case Lords Justices Lindley, Chitty and Vaughan-Williams[2] expressed the opinion that the only cases where watching and besetting is now lawful is that mentioned in the proviso at the end of section seven, viz: for obtaining and communicating information. In the latter case Lord Justice Fletcher-Moulton does not agree with that view. In his opinion it is not enough to show that there was watching and besetting for a purpose other than obtaining and communicating information. It must also be shown that it was "wrongful" or such as would be restrained before the Act. The omission of the proviso in favour of obtaining and communicating information from the Canadian Act is not without significance. It would indicate the intention of Parliament to be that attending for the purpose of obtaining and communicating information would not deprive watching and besetting of its wrongful character, if such watching and besetting considered apart from such purpose, was wrongful. In other words that watching and besetting may under our Act be merely for the purpose of obtaining and communicating information and may still be wrongful within the Act. Whatever differences of opinion exist as to the proper construction of the term "wrongful" as used in the Act, all agree that if the watching and besetting amounts to a common law nuisance it is within the prohibition of the statute. In *Lyons v. Wilkins* it was admitted that the defendants used no violence, intimidation or threats, but it was found that the picketing and the acts done by the pickets were done with a view to compel the plaintiffs to change the mode of conducting their own business, and constituted watching and besetting as distinguished from attending to obtain and communicate information. The plaintiffs had a verdict for an injunction restraining that class of conduct and the Court of Appeal sustained it.

The present is a stronger case against the defendants because there were some attempts at intimidation by threats of violence, although the picketing was generally carried on in a peaceful and orderly manner. . . . These are the only overt acts of violence or intimidation established and, from the fact that the plaintiff had detectives employed in and about the shop during the whole period of the strike, I think it may be fairly assumed that if acts of intimidation, coercion or threats had been general they would have been discovered. . . . Under the circumstances, I think it is much to the credit of the men that so few acts of coercion or intimidation were committed. . . . The evidence satisfies me that, in thus endeavouring to prevent the plaintiff from getting the men urgently needed, the pickets met with a considerable measure of success. It cannot be doubted, I think, that where an employer desires to employ workmen and a number of men post themselves on the approaches to his shop for the purpose of persuading men not to work for him or to seek employment from him, such conduct would support an action for a common law nuisance. And proof that the means made use of

[1]Vaughan-Williams, L. J. concurred in the judgment in *Lyons v. Wilkins* because he felt bound by the previous decision of the Court on the interlocutory injunction. He agreed with Moulton, L. J. in *Ward, Lock* case, *supra*, p. 86.

was peaceable persuasion would afford no defence. . . . I am, therefore, of opinion that the picketing as conducted amounted to a common law nuisance and that the individual defendants who took part in it, as well as all who acted in combination with them, are liable to the plaintiff for the damage occasioned thereby.[1]

In 1920, in the Manitoba Court of Appeal it was pointed out:

> By the English Act of 1875 (ch. 86) what is known as "peaceful picketing" is excepted from the enactment making intimidation and picketing in general illegal. . . . This was adopted in Canada by the Act of 1876, ch. 37. . . . When *The Criminal Code*, 1892, c. 29, was compiled the exception in favour of "peaceful picketing" was omitted and has never since, so far as I can find, been re-enacted.[2]

In a Quebec court Maclennan, J., said:[3]

> A workman has a right in his own interest to peaceably persuade persons, another workman or body of workmen, to legally terminate their contracts of employment and to cease work, but he has no right by coercion or intimidation, to persuade workmen not to work or to abstain from working. . . . The Imperial Conspiracy and Protection of Property Act, 1875, s. 7, from which the above section is substantially reproduced, contained a proviso not found in the Criminal Code; that attending merely to obtain or communicate information shall not be deemed watching or besetting and it seems to indicate the intention of Parliament by the omission to be that attending for the purpose of obtaining or communicating information would not deprive watching and besetting of its wrongful character. . . . I have referred to what I consider to be the law on this subject and to jurisprudence showing how the law has been interpreted and applied and I come back to the question: Were the means used by defendants lawful? All the surrounding circumstances have to be taken into consideration. . . . Pickets in large numbers were posted in the immediate vicinity of plaintiff's establishment, followed by acts of violence, threats of bodily harm and warnings of danger, the following of workers on the streets and to their homes, and requests to cease work and join the Union. These were overt acts committed by the defendants' pickets. . . . It is apparent from the manner in which the strike was inaugurated and the subsequent picketing was conducted, with deliberate and relentless vigour regardless of annoyance and inconvenience to plaintiff and serious interference with his business, that the picketing was not for the purpose of peaceable persuasion, but for the purpose of compulsion by coercion and intimidation and that the means adopted were not lawful or justified and went beyond anything permitted by the civil or criminal law. The massing of a large number of pickets is in itself intimidating to workers. . . . The strong, persistent and organized picketing, making the condition of plaintiff and his workers disagreeable and intolerable, accompanied by hints of injury, veiled threats, abusive and offensive language and some instances of assault and personal violence—all of which conditions are shown in the evidence of this case—discloses conduct on the part of defendants which passed beyond that of the peaceful purpose of promoting the lawful aims of the Union and its members and entered the unlawful stage of wrongful injury, without just cause or excuse, to rights fully protected by the law and where picketing is carried on by intimidation, threats, coercion or violence—as has been done in this case—it has been held in every jurisdiction, where the question has been raised, that such conduct on the part of pickets is unlawful and will be enjoined.

---

[1] At pp. 477-482.
[2] Perdue, C. J., in *R. v. Russell* (1920) 1 W.W.R. at p. 635.
[3] *Rother v. International Ladies' Garment Workers' Union* (1921) Q.R. 60 S.C. at p. 109.

> I am of the opinion that the picketing carried on by defendants and their pickets was wrongful and without lawful authority and amounted to a common law nuisance and violation of Art. 1053 of the Civil Code,[1] as well as a breach of the criminal law.

This decision was confirmed by the Court of King's Bench, one of the members observing:

> I will concede the right of employees to strike. I will concede the right of the union to peacefully promote the success of such strike and make use of peaceful persuasion in aid thereof, but the use of militant methods amounting to intimidation is neither peaceful nor lawful. . . . These acts were all calculated to provoke and did provoke breaches of the peace because respondent persisted in his right to maintain an open shop and not recognize the Union. Respondent was at liberty to run his business in his own way provided he did not violate the law or infringe the rights of other people.
>
> Members of the Union had the right to abstain from working in respondent's establishment if they chose to do so, and upon the strike being declared the two employees of respondent who were members of the Union did so elect and voluntarily ceased work, but others who desired to remain had the right to do so and any interference with the latter's right to do so or with respondent's right to engage them to do so was illegal and unjustifiable. . . . . In the present case, there is evidence of direct interference, obstruction, intimidation and assault. Counsel for appellants states in his factum that:—" the real issue is the right to picket." And asked this Court to lay down rules for the guidance of labour Unions and strikers.
>
> I do not propose to lay down any general rule of conduct for any person or aggregation of persons, bodies corporate or unincorporate. If they do not act within the law of this country, their conduct should be restrained and punished.
>
> While peaceful persuasion is permissible, militant methods amounting to intimidation and threats of violence followed by acts of violence are clearly illegal and may be restrained and the person whose liberty of action is so interfered with protected. . . .
>
> The acts of appellants as disclosed by the evidence constitute not only breaches of the peace and violation of the Criminal law, but also constitute a common law nuisance which may be restrained by injunction. . . . The whole purpose of the Union in placing these pickets around respondent's establishment was to interfere with respondent's business and intimidate those of his employees who remained loyal to him and who desired to continue in his employ.
>
> The aggressive action of the appellants could have no other purpose and it is against the continuance of such intimidation and interference with the civil right of respondent that the restraining order is directed.[2]

As to the propriety of an order to restrain picketing, Greenshields, J., made the following statement:

> Appellants' learned Counsel submits that an injunction or restraining order would not lie, since if the facts are as alleged by respondent, resort should be had to the Criminal Code and the offenders punished in virtue thereof. In other words, says the learned Counsel, an injunction will not lie to restrain a man from committing a criminal offence. It would seem useless to discuss the proposition. I should concede that a general order

[1] Art. 1053, Civil Code of Lower Canada : Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

[2] Martin, J. in (1923) Q.R. 34 K.B. at p. 70.

would not issue restraining men, generally, from committing murder, but I do assert without hesitation, that if a number of men combine together to do an illegal act, they may be punished under the law relating to conspiracies. The offence is the criminal combination with intent whether the act is accomplished or not. The accomplishment of the act, which would result in damages, may be restrained by the civil writ of injunction. A man may not be forced to stand quietly by and see his property destroyed because the criminal law may reach those who commit the act. The civil law will give him a remedy to prevent the destruction and the criminal law may or may not impose a punishment on the offender.[1]

Shortly after the appeal in *Rother* case had been dismissed, an injunction was applied for in the Superior Court at Montreal to restrain the Joint Board of the Cloak and Suit Makers' Union of Montreal from picketing the plaintiffs' places of business. An interim order was issued and was later made permanent,

enjoining the defendants from molesting or interfering with plaintiffs and from in any way picketing or besetting or watching such places of business or the residence of any of plaintiffs' employees or from following them with a view to intimidating the latter from entering or remaining in plaintiffs' employ.[2]

I think the legal principles governing cases of this kind, at least, so far as this province is concerned, are laid down in the reported case of *International Ladies' Garment Workers' Union v. Rother*. . . .

Of course, each case must be considered and determined on its own facts In the present case, it is established by Sergt. Laporte of No. 10 Station that on the 22nd of January he was called to Crescent Street about 6 p.m. opposite the premises of Plaintiffs and found there fifty or sixty employees speaking and shouting. He recognized the defendant Martel and some of the others. He told them to move on, but Martel said that he had business there. The following morning at 7 a.m. he found seven men and four women picketers, Martel being among them. In the evening of the same day, there were five men and four women picketers there. On the 24th at 6 p.m. there were fifteen men and three women picketing, four in front of the premises and the rest of them walking up and down. Jacobs, one of the Defendants, was among them and several of them remained until about 8.30 p.m. On the 25th at 6 p.m. there were five men and three women picketing in front of the premises. He was not on duty on the 26th but was on duty on the 27th and arrested four of the picketers. . . .

It is established that several of the employees of the Montreal Garment Company who remained and others hired to replace employees of the Empire Garment Company who had gone out on strike, were housed and fed in the building. They were afraid to go home. . . . The whole purpose of placing these pickets around plaintiffs' establishment was to interfere with their business and intimidate those employees and others who desired to continue in plaintiffs' employ; and in going to and from work, all employees are entitled to use the streets and sidewalks without obstruction or molestation.

The action of the defendants was an unjustifiable invasion of the property rights and business of the plaintiffs and an obstruction and annoyance savouring of intimidation.[3]

---

[1]At p. 77. For opinion of Ontario Court on this point, see *infra*, p. 94.

[2]*Bercovitch v. Joint Board of Cloak and Suit Makers' Union of Montreal* (1923) C.A. 279. (Not reported.) *The Labour Gazette*, vol. 23, p. 635.

[3]Martin, J. at p. 636.

The *Rother* decision was followed also in a conviction for illegal picketing in Montreal in 1928.[1] In this case there appears to have been no violence. Girls acted as pickets during the noon hour before the clothing factory struck against, but no attempt was made to speak to the workers. When the pickets refused to move on when ordered by the police, they were arrested. The conviction was affirmed by the Court of King's Bench.

In an action against the Amalgamated Clothing Workers of America in 1930, *Lyons v. Wilkins* and the Maclennan judgment in the *Rother* case above were followed. Bond, J., of the Quebec Court of King's Bench remarked:

> As to picketing, this has long been recognized as being unlawful when it amounts to something more than "peaceful picketing," namely intimidation by show of force, harassing and besetting those desirous of working, and watching their private residences.[2]

The legality of the picketing in this case did not come before the Supreme Court of Canada when the judgment was appealed.

In three provinces civil actions against the local branch of the theatrical stage employees' and moving-picture operators' union involved the question of the right to picket in the particular manner ordered by the union. In British Columbia the matter came before the courts in *Schuberg v. Local 118, International Alliance of Theatrical Stage Employees and Moving-Picture Machine Operators* which was discussed above.[3] This judgment was confirmed by the Supreme Court on an equal division. Damages were allowed the plaintiff on the ground that the picketing carried on was "watching and besetting" and so contrary to the Criminal Code, that it was part of a conspiracy to injure and an actionable wrong.

In 1933, the British Columbia Supreme Court dismissed an appeal on a stated case against a conviction under section 501 of the Criminal Code for watching and besetting a theatre in New Westminster with a view to compelling the manager to abstain from employing moving-picture operators affiliated with a certain labour council.[4] As in the *Schuberg* case, the judgment of the trial court was confirmed, the four members of the Supreme Court dividing equally on the case. Picketing in this strike took the form of walking up and down before the theatre wearing slickers on the back of which were printed the words: "The Edison Theatre does not employ union picture projectionists affiliated with the New Westminster and Vancouver Trades and Labour Council."

> These words were true. . . . The defendants' proceedings were peaceful; their counsel contended their proceedings were not unlawful because their object was not to injure the respondent but to right a trade grievance. Their said conduct did affect adversely the respondent's trade receipts and profits but very slightly. The appellants so beset the theatre for about one hour when they were arrested. . . . The real question for decision here is: "Was the appellants' conduct wrongful and illegal?" That question was dealt with and considered in *Reners v. Reg* . . . where the Court sustained a conviction for besetting and watching where the appellants picketed a coal mine in Alberta. . . . In *Reners* case, *supra*, the acts of the

[1] *R. v. Goldman* (1928) Q.R. 45 K.B. 287.
[2] *Society Brand Clothes Ltd. v. Amalgamated Clothing Workers of America*, (1930) Q.R. 48 K.B. at p. 31.
[3] *Supra*, p. 81.
[4] *R. v. Richards and Woolridge*, (1934) 2 W.W.R. 390.

> appellants were much more aggressive and injurious than in this case where the besetting and watching were peaceful. . . . The appellants beset and watched the theatre, whether peacefully or not, makes, in my opinion, no difference. The offence falls within the very language of the section and since they did these things without lawful authority they were guilty of the crime aimed at by the said section and, in my opinion, the appeal should be dismissed.[1]

Another member of the Court, who agreed with the Chief Justice that the appeal should be dismissed, was of the opinion that

> There was wrongful interference here with the business of the theatre —it was besetting and watching and contrary to the criminal law of Canada. . . . It was wrongful and without lawful authority. Can there be any conclusion here other than that it was done for the purpose of injuring the owner or operator of the theatre and affecting him—in the way of bringing about the impossibility of carrying it on—by lack of patronage.[2]

Of the two judges who would have allowed the appeal, one held that the British Columbia Trade Unions Act gave the defendants "lawful authority" to picket in a peaceful manner and thus freed them from liability under the Criminal Code which stipulates that the watching and besetting to be illegal must be done "wrongfully and without lawful authority." Further, he considered that since the equal division of the court showed there was a substantial doubt about the construction of section 501 (*f*) of the Criminal Code, the proper course to adopt was to respect the rights of the appellants

> and leave it to the National Parliament to declare beyond doubt, if it feels so disposed, that it regards what the appellants have done as constituting a crime.[3]

The fourth member of the Court, following Newcombe, J., of the Supreme Court of Canada in the *Reners* case,[4] thought that if the watching and besetting was not at common law wrongful or not a violation of statute law, it was not without lawful authority. If carried on in a manner to create a nuisance, however, it was at common law wrongful and without lawful authority. In the *Reners* case, it was held that the acts complained of amounted to a nuisance.

> That is not so in the case at bar. . . . Because, therefore, the "watching and besetting" was carried on without creating a nuisance and without violence or intimidation I think, without considering the effect, if any, of the provisions of the *Act relating to Trade-unions* referred to, that appellants' acts were not "wrongful" at common law, nor committed "without lawful authority" within the meaning of section 501 (*f*) of the *Code* and that the appeal should therefore be allowed.[5]

In Ontario in 1922, defendants in an action brought by the manager of a theatre in Windsor,[6] were enjoined from

> publishing by means of hand-bills or banners or otherwise, the statement that the plaintiff or the Windsor Theatre is unfair to organized labour, or any other defamatory statement of or concerning the plaintiff or the

---

[1] Macdonald, C. J., at p. 392.
[2] McPhillips, J., at p. 405.
[3] At p. 399.
[4] *Infra*, p. 98.
[5] Macdonald, J., at p. 408.
[6] *Meretsky v. Arntfield*, (1921-22) 21 O.W.N. 439.

theatre, and from watching or besetting the theatre for the purpose of persuading or otherwise preventing persons from entering the same or for the purpose of persuading or otherwise preventing persons for working for the plaintiff or in the theatre or for any other purpose, and from procuring or endeavouring to procure any person or persons to break his or their contracts with the plaintiff or with the theatre.

The learned Judge refrained from a discussion of the law, and confined himself by saying that he took as a model the form of order proposed by Kay, L.J., in *Lyons & Sons v. Wilkins* (1896) . . . with such modifications as were necessitated by the facts that in s. 501 of the Criminal Code there is no clause, as there is in s. 7 of the Conspiracy and Protection of Property Act, 1875, declaring that attending at a place to obtain or communicate information shall not be deemed a watching or besetting within the meaning of the section. The learned Judge notes the interpretation which the Court of Appeal in *Lyons v. Wilkins* (1899) . . . placed upon the words "wrongfully and without legal authority," found in the first part of the section. The words printed on the hand-bills and placard mentioned in the affidavits—"The Windsor Theatre is unfair to unorganized labour"—are *prima facie* defamatory; and even the most peaceable picketing of the approaches to a theatre is likely to amount to coercion in the case of timid theatre-goers.

In a Hamilton case in 1924, the above decision was followed and an interlocutory order issued restraining until the trial the Hamilton Motion Picture Projectionists' Local Union 303 from publishing hand-bills stating that the plaintiff was unfair to organized labour and from watching and besetting the theatre.[1] The defendants had been charged with an offence under section 501 of the Criminal Code and with publishing defamatory statements. When this order was appealed to the Supreme Court of Ontario, it was held that a proper case for an order enjoining the defendants in the manner stated had not been made and the injunction was therefore dissolved. Beyond this it was impossible for the Court to go as the expression of any opinion on the merits of the case would tend to the prejudice of one side or the other at the forthcoming trial. In the opinion of the Court:—

The equitable jurisdiction of a civil court cannot properly be invoked to suppress crime. Unlawful acts which are an offence against the public, and so fall within the criminal law, may also be the foundation of an action based upon the civil wrong done to an individual, but when Parliament has, in the public interest, forbidden certain acts and made them an offence against the law of the land, then unless a right to property is affected, the civil courts should not attempt to interfere and forbid by their injunction that which has already been forbidden by Parliament itself. Much less should the courts interfere when the thing complained of is not within the terms of the criminal law, although it may be rightly regarded as objectionable or even immoral, for then the civil courts by injunction are attempting to enlarge and amend the criminal law. Government by injunction is a thing abhorrent to the law of England and of this Province. . . . The cases which I have quoted indicate the necessity of great care being exercised upon application for an interim injunction in cases such as this. It may be that at the trial the plaintiff may be able to shew some sufficient reason to justify the granting of an injunction on the theory that a nuisance has been established upon the lines indicated in *Lyons (J.) & Sons v.*

[1] *Robinson v. Adams*, (1924-25) 56 O.L.R. 217.

Wilkins (1899). . . . Possibly a case may be made out establishing the publication of defamatory statements calculated to injure the plaintiff in his business, as was shewn in the case of *Hermann Loog v. Bean* (1884), 26 Ch. D. 306. It must, however, not be forgotten that it is not defamatory to state truthfully of a business man that he will not employ the members of a trade union in his business.[1]

In 1930, a motion for an order to continue until the trial an interim injunction granted by a local judge at Hamilton restraining the union from watching and besetting the plaintiffs' theatre was refused by Garrow, J., of the Ontario High Court following the *Robinson* case.[2] The defendants had been convicted by a magistrate under section 501 of the Criminal Code. The picketing was described by the Appeal Court:

> The besetting took this form: the appellants, two at a time, wearing rain-coats on the back of which were printed, "This theatre is trying to destroy Union working conditions," "Protect your own future by staying away from this theatre," "This theatre does not employ Union projectonists," and "Stay away from this theatre if you believe in Union working conditions," paraded in front of the theatre, walking separately, one going in one direction and the other in the opposite direction, the two meeting usually, about opposite the middle of the front of the theatre. The conduct of the appellants was peaceable; no crowd gathered; there was no evidence of any threats, obstruction, molestation, impeding or incommoding of patrons or prospective patrons of the theatre.[3]

The appeal on the case stated by the magistrate was allowed.

> There is weighty authority in support of the first of the opinions expressed by the magistrate, viz., that the defendants' acts were done wrongfully and without lawful authority simply because they were done with a view to compel the complainant to do something from which he had a lawful right to abstain; but, after long consideration of the relevant authorities, of which the principal are: *J. Lyons & Sons v. Wilkins* (1899) . . . *Ward, Lock & Co., Ltd. v. Operative Printers' Assistants' Society* (1906) . . . *Rex v. Blachsawl* (1925), 21 Alta. L.R. 500, and *Reners v. The King* (1926), S.C.R. 499; the learned Chief Justice is of opinion that proof merely that the defendants acted with the view stated in s. 501 of the Code is not proof that they "acted wrongfully and without lawful authority," and that the conviction cannot be supported upon the first of the grounds stated by the magistrate. In the *Blachsawl* case the attention of the Court was not directed to the *Ward, Lock* case.
>
> As to the second of the magistrate's grounds, the defendants were not guilty of disorderly conduct as it is defined in s. 238 (*f*) of the Code; they did not cause a disturbance in the street, and they did not impede or incommode peaceable passengers; and so the conviction cannot be upheld on the second ground just as it is stated. And the acts complained of did not amount to a common-law nuisance, nor could it be said that there was any publication of a libel. The charges printed on the backs of the rain-coats are not *prima facie* libellous without proof that the Union conditions are conditions which ought to prevail so that there is something disgraceful in attempting to destroy them. This opinion does not seem to be at variance with that expressed in *Meretsky v. Arntfield* (1922), and, as was

[1] Middleton, J., at pp. 224 and 227.
[2] *Stewart v. Baldassari* (1931) 37 O.W.N. 431.
[3] *R. v. Baldassari*, (1931) 40 O.W.N. 29.

> pointed out in *Robinson v. Adams* (1924), it is not defamatory to state truthfully of a business man that he will not employ the members of a trades union in his business.[1]

A somewhat similar case came before the Ontario Court of Appeal in April, 1934.[2] The plaintiff claimed, against five members of the restaurant employees' union in Toronto, damages for libel and for interference with the plaintiff's business and an injunction restraining the defendants from further publishing defamatory statements about the plaintiff or his business and from watching and besetting his premises. An interim injunction was granted restraining the defendants until the trial from threatening, accosting, intimidating or otherwise interfering with any employees or customers of the plaintiff for the purpose of inducing such employees or other persons from retaining or accepting employment or of inducing such employees or customers from doing any lawful business with the plaintiff. Special leave to appeal from this order was given to the plaintiff who sought a much wider order, claiming to be entitled to an interim injunction restraining the defendants

> from besetting and watching the place where the plaintiff carries on business. . . ., and from picketing the place where the plaintiff carries on business, and from further publishing, or causing to be published signs, sandwich boards, placards, handbills, circulars, or any other written or printed representations to the effect that a strike, or lockout, is now on at the plaintiff's place of business, or that discrimination is there practised, or that low wages are in effect there.

The Appeal Court was of the opinion that

> an interlocutory injunction should not be granted in any such case unless well warranted by authority and likely to do less harm to the defendants, if the plaintiff should fail at the trial, than the withholding of the injunction from the plaintiff at this time would do to the plaintiff, if he should succeed.

Under the circumstances, it was held that the order granted should only be varied by adding an injunction against defamatory statements which might be injurious to the plaintiffs' trade. As to an order restraining the defendants from besetting and watching, it was pointed out that

> If there is a real case of "besetting and watching," as he claims, within the meaning of sec. 501 (*f*) of The Criminal Code, the plaintiff's remedy lies in a criminal prosecution. The equitable jurisdiction of the civil Courts should not be extended to regulate public conduct.

As an agreement between the plaintiff in this action and the union was arrived at, there were no further legal proceedings.

In Alberta in 1925, two men were convicted by a magistrate for watching and besetting a theatre contrary to the Criminal Code.[3] They were employed by the musicians' union of Calgary to distribute handbills in the neighbourhood of a theatre bearing statements to the effect that the management did not employ union members and asking the public not to patronize the theatre. In the Alberta Supreme Court, it was emphasized that the union desired the lawfulness of such

---

[1] Rose, C. J., at p. 30.
[2] *Dallas v. Felek*, (1934) O.W.N. 247.
[3] *R. ex rel Barron v. Blachsawl*, (1925) 3 W.W.R. 344.

picketing decided without regard to the fact that the two defendants were merely employed to distribute hand-bills and were not concerned with the purpose of the union. Following *Lyons v. Wilkins*, the Court dismissed the appeal.

> It is clear upon the facts admitted or proven that the intent or purpose of the federation was to compel the managers of the theatre to do something which they had a legal right to refrain from doing. Having reached this point it is clear that we have every fact established which would bring the accused within the words of s. 501 except with reference to the expression "wrongful and without lawful authority."[1]

On this expression, Lord Lindley in *Lyons v. Wilkins* is quoted as follows in part:

> But it is not necessary to show the illegality of the overt acts complained of by other evidence than that which proves the acts themselves if no justification or excuse for them is reasonably consistent with the facts proved. This is the principle always applied in criminal prosecutions in which the words "feloniously," "wrongful" or "maliciously" are introduced into the charge and have to be proved.

An action for damages for picketing a restaurant was dismissed by Ives, J., of the Alberta Supreme Court in 1923.[2]

> The picketing. . . . consisted in members of the union patrolling the streets in front of plaintiff's premises, at times standing about the café street door, and distributing to the public patronizing the café hand-bills whereby the recipient was informed of those restaurants in the city of Calgary that were fair to union labour, no mention whatever being made of the plaintiff's café or any other "unfair" restaurant, the inference being, of course, that those not mentioned were "unfair."
>
> This resulted in a very serious decline in the plaintiff's business and financial loss which he here seeks to recover. There is no doubt that the defendants agreed together to picket the City Café when at the special meeting the resolution was adopted. And, at the time, it must have been in the mind of the defendants that the result of such picketing would reduce the café business. Indeed they could have no other object than that such reduction would compel a compliance with the union terms of employment. But there is no evidence that any malice actuated the defendants or that injury to the plaintiff was their primary object or intent. They did legally what they were legally entitled to do. The public patronage of the plaintiff's business was entirely voluntary. His customers could lawfully cease their patronage at any moment and were induced to do so by the defendants in an effort to advance the legitimate interests of themselves and other members of the union.

It will be observed that most of the cases referred to above have arisen as civil actions for damages alleged to have been sustained as a result of picketing. Other cases arose from a motion for an injunction restraining the members of a union from picketing. In the latter class of cases, it appears to have been settled in Ontario at any rate that where the picketing is alleged to be a violation of s. 501 of the Criminal Code, a restraining order should not be issued by a Court unless there is a threat to property.[3] As to suits for damages, it is necessary to show that damages have resulted from the picketing and that the acts of the pickets were unlawful on one ground or another. The Court has, therefore, to

[1] Stuart, J., at p. 348.
[2] *Dick v. Stephenson*, (1923) 3 W.W.R. 761.
[3] See *Stewart v. Baldassari*, *supra*, *p.* 95.

determine the legality or illegality of picketing as carried on in each case and so we have pronouncements of the Courts in civil cases on the character of picketing at law. While there have been frequent convictions by magistrates for watching and besetting, comparatively few criminal cases have reached the higher Courts.[1]

Only one such case seems to have come before the Supreme Court of Canada, an appeal from a judgment of the Alberta Court of Appeal affirming conviction for picketing.[2] In view of the increasing importance of the subject and because the members of the Alberta Court were not unanimous in support of the conviction, the Court "directed that separate judgments be given for the purpose of enabling and facilitating an appeal to the Supreme Court of Canada."[3]

> There was dissatisfaction among some of the miners over the new wage scale and steps were taken to organize a new union and many of the men went out on strike, but instead of the contest being, as is usual, between the operators and the miners, it was primarily between the miners themselves in relation to the two organizations . . . . For two or three days pickets of miners of the new organization were stationed in various places of vantage to watch the approach to the mine for the purpose, as one of them states, "to persuade these miners, who were working at the mine and men who were brought in to work at the mine, not to go to work at the reduced scale of wages which was below the wages they had been earning previously."
>
> This purpose, if effected, would, of course, completely close down the mine and, apparently with the object of making it completely effective, the pickets were kept at night as well as by day though the mine was apparently not actively operating by night though, as one can readily understand, to avoid pickets, men might be brought in at night for day work if there were no pickets at that time.
>
> It is not seriously argued that this picketing did not constitute a watching and besetting within the terms of the section or that it did not have in view the compelling of the mine to cease operations, but it is very urgently argued that as no violence was used or intended and only information and peaceful persuasion were to be used as weapons it is not an offence within the section.[4]

Before the Alberta Court, counsel for the appellants, referring to the decision of the same Court the year before in the *Blachsawl* case which followed the English decision of *Lyons v. Wilkins,* stressed the somewhat different judgment of the English Courts in *Ward, Lock & Co. v. Operative Printers' Assistant's Society.* The majority of the Alberta Court of Appeal held that the case did not fall within "the qualifications" of the *Ward, Lock* case and dismissed the appeal. In dissenting, Clark, J., said:

> I agree that the defendant should be held responsible as one of the watching and besetting parties engaged in what is commonly called picketing and that he with the others charged did with a view to compel another person to abstain from doing something which he had a lawful right to abstain, beset or watch the place where such other person works or carries

[1] See *R. v. Goldman* (Que.), *R. v. Baldassari* (Ont.) and *R. v. Blachsawl* (Alta.) *supra* and *R. v. Reners, infra.*
[2] *R. v. Reners,* (1926) 1 W.W.R. 810; (1926) 3 D.L.R. 669.
[3] Harvey, C. J., at p. 810.
[4] Ibid. at p. 811.

on business within the meaning of s. 501 (f) but my difficulty is in saying that such picketing is wrongful and without lawful authority, or in other words that peaceful picketing is wrongful.

If it is not wrongful then, in my opinion, the conviction cannot be supported upon the evidence. There is no evidence that during the night when the conduct of the defendant is complained of there was any interference with either the Mining Company or its workmen, or any violence, intimidation or threats . . . .

In *Rex ex rel Barron v. Blachsawl; Rex ex rel Barron v. Hangsjaa,* where the conviction of the defendant on a similar charge was affirmed by this Court, *Lyons v. Wilkins,* was strongly relied upon. I understand the court there held that watching and besetting, however peaceable, was a common-law nuisance and, therefore, wrongful and that the qualifying words in s. 7 as to obtaining and communicating information alone rendered it rightful. If that decision stood unchallenged, I would not hesitate to say it was conclusive of the present appeal in favour of the Crown not only by reason of the absence of the qualifying words in our s. 501 but because if they were still in the Act they do not extend to persuading, which was part of the plan here.

The later case of *Ward, Lock & Co. v. Operative Printers' Assistants Society,* applied in *Fowler v. Kibble* (1922) seems to me to cast considerable doubt upon the correctness of the decision in *Lyons v. Wilkins.* It was not referred to in the *Blachsawl* case and it is said that it was not brought to the attention of the Court which I think is correct. I gather from that case that peaceable picketing was not considered to be wrongful at common law and was not made illegal by s. 7 of the Imperial Act and if that be correct it can scarcely be wrongful under our s. 501. But for the fact that owing to the general importance of the question the defendant is desirous of obtaining the opinion of the Supreme Court of Canada, I would say that the question is determined by our former decision but considering it a proper case for an appeal I have decided to dissent from the judgment of the majority and adopting what I take to be the result of the *Ward, Lock* case would hold that the element of wrongfulness is lacking in this case and would, therefore, allow the appeal and quash the conviction.[1]

The Supreme Court of Canada dismissed the appeal, Idington, J., remarking:

By our Canadian Courts, cases were decided in Manitoba and Alberta adopting the law as settled by the *Lyons v. Wilkins* case, and others.

This I accept as good law yet, and more especially so when the subsequent paragraph above referred to had been eliminated in framing our Cr. Code in 1892 . . . I may add, however, that having read the entire case I find there is evidence of actual violence, trespass and abusive and vile language, even in the presence of policemen keeping guard, which removes all doubt in law and in fact of the guilt of the appellant, who ran away on hearing someone approach.[2]

Newcombe, J., with whom Duff and Mignault, JJ., concurred, held that—

In view of the nature of the dissent and seeing that the jurisdiction of this Court in criminal appeals is limited to questions of law, which are the subject of difference below, the point which this Court has now to determine is in reality whether there was evidence at the trial that the watching and besetting in which the appellant was engaged was wrongful and without lawful authority. Upon this point I entertain no doubt.

[1] At p. 817.
[2] (1926) 3 D.L.R. at p. 675.

In the *Lyons* case, the Court of Appeal upon both occasions considered the interpretation of s. 7 (4) of the Conspiracy and Protection of Property Act, which corresponds, with unimportant variations, with s. 501 (f) of the Cr. Code, upon which the present charge is laid. It is explained by the concluding clause of s. 7 of the Conspiracy and Protection of Property Act that,—"Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section." But this clause is not embodied in the Cr. Code, and for that reason, as well as because of the facts in proof, it has no application to the case now under review.

Lindley, M.R., considered that to watch and beset in order to compel caused a nuisance, and he found upon the evidence that there was a nuisance. But in the *Ward, Lock* case Moulton, L.J., was of the opinion that there might be a sort of compulsion which would not be wrongful or illegal and therefore that the conclusion of the Master of the Rolls was too broad; he did not, however, deny its application to the particular case which the Master of the Rolls had in hand, and these great Judges were in perfect agreement that it was necessary to establish in one way or another that the watching and besetting was done wrongfully and without legal authority.

In *Ward, Lock & Co. v. Operative Printers' Assistants' Society* . . . the defendant had stationed pickets to watch the plaintiffs' printing works for the purpose of inducing the workmen employed by the plaintiffs to join the union, and then to determine their employment by proper notices, the object being thereby to compel the plaintiffs to become employers of union men, and to abstain from employing non-union men; the report states (headnote) that: "This was carried out without causing, by violence, obstruction, or otherwise, a common law nuisance." Moulton, L.J., said, as reported at p. 330: "In my view that which decides question is that there is no evidence of any improper or illegal acts, or, indeed, of any acts whatever, by any pickets sent by the defendants . . . I wish to add that, in my opinion, there is throughout a complete absence of evidence of anything in the nature of picketing or besetting which could constitute a nuisance. It appears that the discharged workmen loitered about for a day or two after leaving work—a thing which is not unlikely to happen—and that they were at times joined by others, but there is no suggestion even by the plaintiffs' witnesses that any annoyance or molestation took place and the evidence to the contrary is overwhelming." . . . .

This decision is referred to and followed as an important one in *Fowler v. Kibble* (1922), 1 Ch. 487, but, for the purposes of the present case it decides no more than I think was decided by Lindley, M.R., in the *Lyons* case. The judgments concur in the view that watching or besetting, if carried on in a manner to create a nuisance, is at common law wrongful and without legal authority. In the *Lyons* case the Court of Appeal found the essential facts to constitute a common law nuisance. In the *Ward, Lock* case they found that the sort of picketing there in proof afforded no evidence of a nuisance, and these cases do not really assist in the determination of the present question, which depends upon its own facts, except in so far as they affirm, what is evident by the statute itself, that if picketing be carried on in a manner to create a nuisance or otherwise unlawfully it constitutes an offence within the meaning of the statute.

Coming now again to the facts in the present case, the acts with which the appellant is charged were wrongful and unlawful if the watching and

besetting in which he, in common with his comrades or associates, was engaged amounted to a nuisance or to a trespass, or if the men who were watching and besetting constituted an unlawful assembly, and there is evidence as to each of these particulars which ought not to be overlooked.

Moreover, while it is explained, with remarkable agreement on the part of the striking miners, that the purpose of their assembly at and about the mine was peacefully to endeavour to persuade the miners who continued to work to quit the service of the company and to join the new union, in order, as it is said, to maintain the standard of living, the character and purpose of this assembly is, I think, better evidenced by its acts and course of conduct than by the statements of its members as to what their intention was; and the numbers of men who assembled, their distribution about the premises, including the company's property, their attendance there by day and by night, the fires, the shouting, their reception of the police, their threats and conduct when the police approached, afford cogent evidence, not only of a nuisance, but also of an unlawful assembly. . . .

It is not for this Court to judge the evidence, except to determine whether there be any. The appellant's case fails if evidence be found which the trial Judge was bound to consider tending to show that the watching and besetting, which is conclusively found to have taken place, was wrongful and without lawful authority, and I think there is such evidence in each of the aspects to which I have referred.[1]

From a study of the above decisions, considerable difference of opinion appears to have been shown by the various Courts as to what constitutes unlawful picketing. Before the amendment of 1934, section 501 of the Criminal Code declared

> Every one is guilty . . . who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain. . . . (*f*) besets or watches the house or other place where such other person resides or works or carries on business or happens to be.

In applying this section, the judges appear in some cases to emphasize the purpose of the picketing: "to compel the employer"; "with the object of coercing employees or inducing them to cease work"; "for the purpose of compulsion by coercion and intimidation"; "the whole purpose of the union in placing these pickets . . . was to interfere with respondent's business and intimidate those of his employees who remained loyal to him." In Alberta, before the *Reners* case, one decision upheld the legality of the picketing on the ground that injury to the plaintiff was not the primary object of the defendants and that "they did legally what they were legally entitled to do." In an apparently similar case two years later, the Court followed *Lyons v. Wilkins*, in holding that since the purpose of the picketing was to "compel to refrain from doing," it was not necessary to show the illegality of the Acts complained of if there was no justification for them. They were deemed a nuisance as interfering with the employer's business.

[1] At p. 680.

In other cases, attention appears to be directed more to the "watching and besetting" or the means of achieving the purpose rather than to the purpose itself. Where picketing is considered to be a nuisance according to common law, it is "wrongful and without lawful authority." Similarly, when there is deemed to be trespass, or unlawful assembly or unlawful interference with another, the picketing is "wrongful and without lawful authority."[1] The judgment of the Supreme Court of Canada in *R. v. Reners* points out the significance of these words in Section 501.

In some instances, the Court has distinguished between the English Act of 1875 and the Canadian law, and the absence from the latter of the qualifying clause, re-inserted in 1934, has been a factor in bringing about a decision against the pickets. In other cases, the Court has followed the English judgments in *Lyons v. Wilkins* or *Ward, Lock*. Except in the *Reners* case, which involved more than attending for the purpose of communicating information, the Supreme Court of Canada has not been called on to interpret the law on picketing.

CONCLUSION

In concluding this analysis of trade union law in Canada, some general statements may be made. As to the legal position of trade unions, under the criminal law they are no longer conspiracies in restraint of trade; neither may a concerted act of the members "for the purpose of a trade combination" be regarded as a conspiracy unless the act itself is an offence punishable by statute; under the civil law, narrowly interpreted, they appear to suffer certain disabilities if they are not registered under the Trade Unions Act. In actual fact, however, these disabilities have been more theoretical than real since the Canadian Courts have been generally more concerned with what they considered the realities of the problem and the merits of the cases before them than with the peculiar status of trade unions in Canada as revealed by their legal history both in Britain and Canada.

In trade union cases, the Courts have been under the necessity of interpreting the common law, only occasionally statute law, and that in its most uncertain branches. Moreover, the difference between English and Canadian statute law, particularly on picketing and in connection with actions against trade unions for damages has rendered the application of judgments in England to Canadian cases very difficult. Further, Courts in the different provinces have been called on to apply the law but rarely and have found, in some cases, few, if any, precedents actually in point in their own jurisdictions and have had little more to guide them in other provinces. In the last thirty years, only three cases have reached the Supreme Court of Canada. Of the judgments in these cases, one[2] was based partly on law applicable only to Manitoba and partly on "a paramount policy" of the law which would not refuse to render justice to a trade union in its attempt to recover funds improperly withheld. The judg-

[1]The judgment of the House of Lords in *Sorrell v. Smith* (1925) A.C. 700, throws light on unlawful interference with another's business, *supra*, p. 32.
[1]*Chase v. Starr, supra*, p. 46

ments in this case serve to show "the peculiar condition of trade union law in this country." In a picketing case,[1] not only did the evidence, in the opinion of the Court, show watching or besetting, which might or might not be a nuisance according to the circumstances and in this instance constituted a nuisance, but the picketing as carried on involved the offences of trespass and unlawful assembly. The third case, an action for damages from Quebec, was decided according to Quebec law.[2]

The Trade Unions Act has been considered by eminent judges as a statute dealing, chiefly, with property and civil rights, matters outside the legislative jurisdiction of the Dominion Parliament. On the other hand, in only two provinces, British Columbia and Quebec, has the Legislature passed laws affecting the legal position of trade unions. The British Columbia Act deals merely with their liability in civil proceedings for acts in connection with a labour dispute. The Quebec statutes not only provide for the registration of trade unions and confer on registered unions the right to appear before the Courts on behalf of their members and to enforce a collective agreement as between the parties, but, by a recent enactment, enable the terms of a collective agreement as to wages and hours, which has been entered into by a trade union and an employer or an employers' association, to be made legally binding on all persons engaged in the industry concerned in the district determined by the agreement, provided that the latter was signed by persons representing such a portion of the industry as to give to the agreement a "preponderant significance and importance for the establishing of conditions of labour" in the industry. In the other provinces, as in Britain, collective agreements have by themselves no legal force but are only morally binding on the parties to them.

All these factors make for complexity and uncertainty in trade union law in Canada at the present time. In addition, there is the consideration that trade union cases may involve questions of social and economic policy of far reaching consequences.

> Views of policy are taught by experience of the interests of life. Those interests are fields of battle. Whatever decisions are made must be against the wishes and opinion of one party and the distinctions on which they go will be distinctions of degree. . . .
>
> The danger is that such considerations should have their weight. . . . as unconscious prejudice or half conscious inclination. To measure them justly needs not only the highest powers of a judge and a training which the practice of the law does not insure but also a freedom from prepossessions which is very hard to attain.[3]

Finally, economic conditions and institutions in recent years have changed too rapidly for public opinion to keep up with them and in the past the law has lagged behind current opinion in such matters. It should be remembered, too, that the development of public opinion, on which legislation in a democratic country is necessarily based, is, itself, slow, though continuous. By this "gradual system of law-making" we have been spared the instability that may arise from violent changes in legislation.[4]

---

[1] *R. v. Reners.*
[2] *Society Brand Clothes Ltd. v. Amalgamated Clothing Workers of America, supra,* p. 33.
[3] The late Justice O. W. Holmes of the United States Supreme Court, Privileges, Malice and Intent, (1894) 8 *Harvard Law Review* at pp. 7, 9.
[4] Dicey, A. V., *Law and Public Opinion in England,* London, 1914. Lecture II.

TABLE OF CASES

TABLE OF CASES—*Concluded*

APPENDIX

TRADE UNIONS ACT

(Revised Statutes of Canada, 1927, Chapter 202)

1. This Act may be cited as the *Trade Unions Act*. R.S., c. 125, s. 1.

2. In this Act, unless the context otherwise requires, "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, but for this Act, have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade. R.S., c. 125, s. 2.

3. This Act shall not affect

(*a*) any agreement between partners as to their own business;

(*b*) any agreement between an employer and those employed by him as to such employment;

(*c*) any agreement in consideration of the sale of the good-will of a business, or of instruction in any profession, trade or handicraft. R.S., c. 125, s. 3.

4. Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any agreement.

(*a*) between members of a trade union, as such, concerning the conditions on which any members for the time being of the trade union shall, or shall not, sell their goods, transact business, employ or be employed;

(*b*) for the payment by any person of any subscription or penalty to a trade union;

(*c*) for the application of the funds of a trade union,

(i) to provide benefits to members, or

(ii) to furnish contributions to any employer or workman, not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union, or

(iii) to discharge any fine imposed upon any person by sentence of a court of justice;

(*d*) made between one trade union and another;

(*e*) to secure by bond the performance of any of the above-mentioned agreements.

(2) Nothing in this section shall be deemed to constitute any of the agreements above mentioned unlawful. R.S., c. 125, s. 4.

5. No Act in force in Canada providing for the constitution and incorporation of charitable, benevolent or provident institutions, shall apply to trade unions; and this Act shall not apply to any trade union not registered under this Act. R.S., c. 125, s. 5.

Constitution and Registry

6. Any seven or more members of a trade union may, by subscribing their names to the rules of the union and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, but if any one of the purposes of such trade union is unlawful, such registration shall be void. R.S., c. 125, s. 6.

7. The Registrar General of Canada shall be the registrar under this Act. R.S., c. 125, s. 7.

8. With respect to the registry, under this Act, of trade unions, the following provisions shall have effect:—

(*a*) An application to register the trade union and printed copies of its rules, together with a list of the titles and names of its officers, shall be sent to the registrar under this Act;

(*b*) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules;

(*c*) No trade union shall be registered under a name identical with that under which any other trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public;

(*d*) If a trade union which applies to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar, before the registry thereof, a general statement of the receipts, funds, effects and expenditure of such trade union, in the same form and showing the same particulars as if it was the annual general statement required, as hereinafter mentioned to be transmitted annually to the registrar.

(2) The registrar, upon registering such trade union, shall issue a certificate of registry, which certificate, unless it is proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act, with respect to registry, have been complied with. R.S., c. 125, s. 8.

9. The Governor in Council may, from time to time, make regulations respecting registry under this Act, and respecting the seal, if any, to be used for the purpose of such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the first schedule to this Act, and generally for carrying into effect the provisions of this Act as to registry of trade unions. R.S., c. 125, s. 9.

10. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect:—

(*a*) The rules shall contain provisions in respect of the several matters mentioned in the second schedule to this Act;

(*b*) A copy of the rules shall be delivered by the trade union to every person on demand, on payment of a sum not exceeding twenty-five cents. R.S., c. 125, s. 10.

11. Every trade union registered under this Act shall have a registered office, to which all communications and notices may be addressed. R.S., c. 125, s. 11.

12. Notice of the situation of such registered office and of any change therein, shall be given to the registrar and recorded by him; and until such notice is given, the trade union shall not be deemed to have complied with the provisions of this Act. R.S., c. 125, s. 12.

ANNUAL STATEMENT

13. A general statement of the receipts, funds, effects and expenditure of every trade union registered under this Act shall be transmitted to the registrar, before the first day of June in each year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure of the trade union, during the year preceding the date to which it is made out, and separately, the expenditure in respect of the several objects of the trade union, and such statement shall be prepared and made out to such date, in such form and shall comprise such particulars as the registrar, from time to time, requires.

(2) Every member of and depositor in any such trade union shall be entitled to receive, on application to the secretary or treasurer of the trade union, a copy of such general statement, without making any payment for the same. R.S., c. 125, s. 13.

14. There shall be sent to the registrar, together with such general statement, a copy of all new rules and of all alterations of rules, and a statement showing the changes of officers, made by the trade union during the year preceding the date to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date. R.S., s. 125, s. 14.

RESPECTING PROPERTY

15. Any trade union registered under this Act may purchase, or take upon lease, in the names of the trustees for the time being of such trade union, any land not exceeding one acre, and may sell, exchange, mortgage or let the same; and no purchaser, assignee, mortgagee or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purposes of this section, every branch of a trade union shall be considered a distinct union. R.S., c. 125, s. 15.

16. All real and personal property whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of such trade union, appointed as provided by this Act, for the use and benefit of such trade union and the members thereof.

(2) The real or personal property of any branch of a trade union shall be vested in the trustees of such branch and be under the control of such trustees, their respective executors or administrators, according to their respective claims or interests.

(3) Upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of Dominion stock, which shall be transferred into the names of such new trustees. R.S., c. 125, s. 16.

PROCEDURE

17. In all actions, suits or indictments or summary proceedings before any court of summary jurisdiction, touching or concerning any property of a trade union or branch, the same shall be stated to be the property of the persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union without any further description. R.S., c. 125, s. 17.

18. The trustees of any trade union registered under this Act, or any other officer of such trade union who is authorized so to do by the order thereof, may bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint, in any court of competent jurisdiction, touching or concerning the property, right or claim to property of the trade union, and may, in all cases concerning the property, real or personal, of such trade union, sue and be sued, plead and be impleaded, in any such court, in their proper names, without other description than the title of their office.

(2) No such action, suit, prosecution or complaint shall be discontinued or abated by the death or removal from office of such persons, or any of them, but the same shall be proceeded in by or against their successor or successors, as if such death, resignation or removal had not taken place; and such successors shall pay and receive the like costs as if the action, suit, prosecution or complaint had been commenced in their names, for the benefit of, or to be reimbursed from the funds of such trade union.

(3) Any summons to any such trustee or other officer may be served by leaving the same at the registered office of the trade union. R.S., c. 125, s. 18.

ACCOUNTING

19. No trustee of a trade union registered under this Act shall be liable to make good any deficiency which arises or happens in the funds of such trade union; but such trustee shall be liable only for the moneys actually received by him on account of such trade union. R.S., c. 125, s. 19.

20. Every treasurer or other officer of a trade union registered under this Act shall, at such times as he is required by the rules of such trade union, or at any other time, when called upon by such trade union so to do, render to the trustees of the trade union, or the members, at a meeting thereof, a just and true account of all moneys received and paid by him since he last rendered a like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union. R.S., c. 125, s. 20.

21. The trustees shall cause such account to be audited by some fit and proper person or persons appointed by them.

(2) Upon such audit, the treasurer, if required, shall forthwith

(*a*) hand over to the trustees the balance which appears to be due by him;

(*b*) hand over to such trustees all securities and effects, books, papers and property of such trade union in his hands or custody;

and if he fails so to do, the said trustees may sue such treasurer, in any court of competent

jurisdiction, for the balance appearing to have been due from him upon the last account rendered by him, and for all moneys since received by him on account of such trade union, and for the securities and effects, books, papers and property in his hands or custody, leaving him to set off in such action the sums, if any, which he has since paid on account of such trade union.

(3) In such action the trustees shall be entitled to recover their full costs of suit, to be taxed as between solicitor and client. R.S., c. 125, s. 21.

OFFENCES AND PENALTIES

22. If any officer, member or other person who is, or represents himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator or assignee of a member thereof, or any person whatsoever

(*a*) by false representation or imposition, obtains possession of any moneys, securities, books, papers or effects of such trade union; or

(*b*) having the same in his possession, wilfully withholds or fraudulently misapplies the same; or

(*c*) wilfully applies any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any of them;

the magistrate or justices having jurisdiction in cases of complaint for offences under this Act for the place in which the registered office of the trade union is situate, may, by summary order, upon a complaint made by any person on behalf of such trade union, or by the registrar, order such officer, member or other person,

(*a*) to deliver up all such moneys, securities, books, papers or other effects to the trade union; or

(*b*) to repay the amount of money paid improperly; and

(*c*) to pay, if such magistrate or justices think fit, a further sum of money not exceeding one hundred dollars, together with costs not exceeding five dollars;

and in default of such delivery of effects or payment of such amount of money, or payment of such penalty and costs, as aforesaid, the said magistrate or justices may order the person so convicted to be imprisoned, with or without hard labour, for any term not exceeding three months.

(2) Nothing in this Act shall prevent the trade union from proceeding by indictment against the said person; but no person shall be proceeded against by indictment if a conviction has been previously obtained for the same offence under the provisions of this Act. R.S., c. 125, s. 22.

23. If any trade union registered under this Act is in operation for seven days without having a registered office, to which all communications and notices may be addressed, such trade union and every officer thereof shall each incur a penalty not exceeding twenty-five dollars for every day during which it is so in operation. R.S., c. 125, s. 23.

24. Every trade union registered under this Act that fails to transmit to the registrar, before the first day of June in each year, a general statement of its receipts, funds, effects and expenditure,

(*a*) showing fully the assets and liabilities at that date; and

(*b*) the receipts and expenditure of such trade union during the year immediately preceding; and

(*c*) showing separately the expenditure in respect of the several objects of the trade union, prepared and made out to such date, and in such form, and comprising such particulars as the registrar from time to time requires, together with a copy of all alterations of rules and changes of officers made, and a copy of the rules as they exist at that date;

shall incur a penalty not exceeding twenty-five dollars for each such offence.

(2) Every officer of such trade union whose duty it is to transmit any such statement who fails so to do shall incur a penalty not exceeding twenty-five dollars for each such offence.

(3) If the secretary or treasurer of any trade union so registered refuses or fails to furnish to any member thereof or depositor therein, upon application a copy of such general statement, he shall, for each such offence, incur a penalty not exceeding twenty-five dollars. R.S., c. 125, s. 24.

25. Every person who wilfuly makes, or orders to be made, any false entry in or any omission from any such general statement, or in or from the return of such copies or rules or alterations of rules as hereinbefore required shall incur a penalty not exceeding two hundred dollars for each offence. R.S., c. 125, s. 25.

26. Every person who, with intent to mislead or defraud,

(*a*) gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations of the same, falsely pretending that the same are the existing rules of such trade union, or that there are no other rules of such trade union; or

(*b*) gives a copy of any rules of any trade union not registered under this Act to any person under the pretence that such rules are the rules of a trade union registered under this Act;

is guilty of an indictable offence, and liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both, in the discretion of the court. R.S., c. 125, s. 26.

PROCEDURE

27. All offences and penalties under this Act may be prosecuted and recovered on summary conviction.

(2) The description of any offence against this Act in the words of this Act shall be sufficient.

(3) Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of any offence charged under this Act, may be proved by the defendant, but need not be specified in the information, and if so specified and negatived in such information, no proof in relation to the matters specified and negatived shall be required on the part of the informant or prosecutor. R.S., c. 125, ss. 27, 29 and 30.

28. The father, son or brother of a master, in the particular trade or business in or in connection with which any offence under this Act is charged to have been committed, shall not act as a magistrate or justice of the peace, in any

ase of complaint or information under this Act, r as a member of any court for hearing any ppeal in any such case. R.S., c. 125, s. 31.

GENERAL

29. The purposes of any trade union shall not, y reason merely that they are in restraint of rade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise, or so as to render void or voidable any agreement or trust. R.S., c. 125, s. 32.

30. The registrar shall lay before Parliament annual reports with respect to the matters transacted by him as registrar under this Act and in pursuance thereof. R.S., c. 125, s. 33.

CRIMINAL CODE OF CANADA

(Revised Statues of Canada, 1927, Chapter 36)

496. A conspiracy in restraint of trade is an greement between two or more persons to do r procure to be done any unlawful act in estraint of trade. R.S., c. 146, s. 496.

497. The purposes of a trade union are not, y reason merely that they are in restraint of rade, unlawful within the meaning of the last receding section. R.S., c. 146, s. 497.

501. Every one is guilty of an offence punishble, at the option of the accused, on indictment or on summary conviction before two justices and liable on conviction to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour, who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain.

(*a*) uses violence to such other person, or his wife or children, or injures his property; or

(*b*) intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or

(*c*) persistently follows such other person about from place to place; or

(*d*) hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or

(*e*) with one or more other persons, follows such other person, in a disorderly manner, in or through any street or road; or

(*f*) besets or watches the house or other place where such other person resides or works or carries on business or happens to be; or

(*g*) attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section. R.S., c. 146, s. 501; 1934, c. 47, s. 12.

502. Every one is guilty of an indictable offence and liable to two years' imprisonment who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person or, in pursuance of any such combination or conspiracy, uses any violence or threat of violence to any person, with intent to hinder him from working or being employed at such trade, business or manufacture.

(2) Every one is guilty of an offence punishable on indictment, or on summary conviction before two justices, and liable on conviction to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour, who

(*c*) by force or threats of violence, or by any form of intimidation whatsoever, hinders or prevents, or attempts to hinder or prevent any seaman, stevedore, ship carpenter, ship labourer or other person employed to work at or on board, any ship or vessel, or to do any work connected with the loading or unloading thereof, from working at or exercising any lawful trade, business, calling or occupation in or for which he is so employed; or with intent so to hinder or prevent besets or watches such ship, vessel or employee; or

(*d*) beats or uses any violence to, or makes any threat of violence against, any such person with intent to hinder or prevent him from working at or exercising such trade, business, calling or occupation or on account of his having worked at or exercised the same. R.S., c. 146, ss. 502 and 503.

578. No person who is a master, or the father, son or brother of a master in the particular manufacture, trade or business, in or in connection with which any offence under section 501 is charged to have been committed, shall act as a magistrate or justice, in any case of complaint or information under that section, or, as a member of any court for hearing any appeal in any such case. R.S., c. 146, s. 578.

590. No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute. R.S., c. 146, s. 590.

[S. 2 (41) defines a trade combination as "any combination between masters or workmen or other persons for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman in or in respect of his business or employment, or contract of employment or service"].

TRADE UNIONS ACT OF BRITISH COLUMBIA

(Revised Statutes of British Columbia, 1924, Chapter 258)

1. No trade union nor any association of workmen or employees in the province, nor the trustees of any such trade union or association in their representative capacity, shall be liable in damages for any wrongful act of commission or omission in connection with any strike, lock-out, or trade or labour dispute, unless the members of such trade union, or association, or its council, committee, or other governing body, acting within the authority or jurisdiction given such council, committee, or other governing body by the rules, regulations, or directions of such trade union or association or the resolutions or directions of its members resident in the locality or a majority thereof, have authorized or have been a concurring party in such wrongful act. R.S. 1911, c. 228, s. 1.

2. No such trade union or association shall be enjoined, nor shall any officer, member, agent, or servant of such trade union or association or any other person be enjoined, nor shall it or its funds or any such officer, member, agent, servant, or other person be made liable in damages for communicating to any workman, artisan, labourer, employee, or person facts respecting employment or hiring by or with any employer, producer, or consumer or distributor of the products of labour or the purchase of such products, or for persuading or endeavouring to persuade by fair or reasonable argument, without unlawful threats, intimidation, or other unlawful acts, such last-named workman, artisan, labourer, employee, or person, at the expiration of any existing contract, not to renew the same with or to refuse to become the employee or customer of any such employer, producer, consumer, or distributor of the products of labour. R.S. 1911, c. 228, s. 2.

3. No such trade union or association, or its officer, member, agent, or servant, or other person, shall be enjoined or liable in damages, nor shall its funds be liable in damages for publishing information with regard to a strike or lock-out, or proposed or expected strike or lock-out, or other labour grievance or trouble, or for warning workmen, artisans, labourers, or employees or other persons against seeking, or urging workmen, artisans, labourers, employees or other persons not to seek, employment in the locality affected by such strike, lock-out, labour grievance or trouble, or from purchasing, buying, or consuming products produced or distributed by the employer of labour party to such strike, lock-out, labour grievance or trouble, during its continuance. R.S. 1911, c. 228, s. 3.

PROFESSIONAL SYNDICATES ACT OF QUEBEC

(Revised Statutes of Quebec, 1925, Chapter 255)

1. This Act may be cited as the *Professional Syndicates Act.*

DIVISION I

Constitution and Powers

2. 1°. Twenty persons or more engaged in the same profession, the same employment or in similar trades, or doing correlated work having for object the establishing of a determined product, may make and sign a memorandum setting forth their intention of forming an association or professional syndicate.

2°. Such memorandum shall indicate:

(*a*) The name of the association;

(*b*) Its object;

(*c*) The names in full and addresses of the first directors, to the number of three at least and not more than nine, and the names in full and addresses of the persons to be the first president and the first secretary;

(*d*) The site of its principal place of business.

3°. The Lieutenant-Governor in Council may, upon a petition accompanied by the memorandum and the by-laws of the association, approve such by-laws and authorize the incorporation of the signers of the memorandum and of those who may join or succeed to them, as an association or professional syndicate.

4°. Notice that the authorization has been granted must be published by the Provincial Secretary in the *Quebec Official Gazette,* as in form 1, and deposited by the petitioners, after such publication, in the office of the Superior Court of the district where the association's place of business is situated; and, after such publication and deposit, the association shall constitute a corporation, enjoying civil rights.

5°. The publication, deposit and registration of the notice required by this section shall be effected at the cost of the association.

6°. Changes in the by-laws must also, before coming into force, be deposited with the Provincial Secretary and approved by the Lieutenant-Governor in Council.

7°. The by-laws shall not derogate from the law, and must not contain anything contrary to public order. 14 Geo. V, c. 112, s. 1.

3. Professional syndicates shall have exclusively for object the study, defence and promotion of the economic, social and moral interests of the profession. 14 Geo. V, c. 112, s. 2.

4. Minors of sixteen years of age and married women, except when the husbands object, may be members of a professional syndicate. 14 Geo. V, c. 112, s. 3.

5. Only British subjects may compose the directorate of professional syndicates. No syndicate may be constituted unless two-thirds of its members are British subjects.

The admission of foreigners to a syndicate, in excess of one-third of its members, shall involve the dissolution of such syndicate. 14 Geo. V, c. 112, s. 4.

6. Professional syndicates may appear before the courts and acquire, by gratuitous or onerous title, moveable and immoveable property suited to their particular objects.

They shall, subject to existing laws, enjoy all necessary powers for the attainment of their object and may, in particular:

1°. Establish and administer special indemnity funds for the heirs or beneficiaries of deceased members, or for the members on the decease of their consorts, and special funds for superannuation, assistance in case of illness, unemployment, or other funds of a similar nature, which shall be governed exclusively by the by-laws approved by the Lieutenant-Governor in Coun-

cil and subject to the conditions provided for by the Order-in-Council approving such by-laws; 21 Geo. V, c. 98, s. 1; 22 Geo. V, c. 87, s. 1;

2°. Devote a part of their resources to the erection of cheap dwellings and the purchase of grounds for workmen's gardens, and physical and hygienic training;

3°. Establish and administer information bureaus for offers of and applications for work;

4°. Establish, administer and subsidize professional undertakings, such as professional provident institutions, laboratories, experimental fields, scientific, agricultural and social training undertakings, lectures and publications of interest to the profession;

5°. Subsidize and assist co-operative associations for production and consumption;

6°. Purchase to resell, lease, lend or distribute, amongst their members, all necessaries for the maintenance of a family, for the exercise of their profession, raw materials, tools, instruments, machines, fertilizers, seeds, plants, animals and alimentary substances;

7°. Lend their services for the sale of products derived solely from personal labour or from syndical operations; assist such sale by exhibitions, advertising, grouping of orders and of shipment;

8°. Deposit their mark or label;

9°. Enter into contracts or agreements with all other syndicates, societies, undertakings or persons, respecting the attainment of their objects and particularly such as relate to the collective conditions of labour;

10°. Exercise before any court of law, all the rights of their members with respect to acts directly or indirectly prejudiciable to the collective interest of the profession which they represent. 14 Geo. V, c. 112, s. 5; 21 Geo. V, c. 98, s. 1.

6-*a*. When a syndicate wishes to change its name, the Lieutenant-Governor in Council may, on evidence, deemed by him sufficient, that such request to change the name is not made for an unlawful purpose, authorize the change of name prayed for in the petition addressed to the Provincial Secretary by the syndicate. 19 Geo. V, c. 70, s. 1.

6-*b*. The Provincial Secretary, as soon as the authorization is granted, shall give notice thereof in the *Quebec Official Gazette*, as in form 2. Subject to such publication, but from the date of the authorization, the syndicate shall be designated under the new name mentioned in the authorization. 19 Geo. V, c. 70, s. 1.

6-*c*. No change of name effected under sections 6-A and 6-B shall alter the rights and obligations of the syndicate; and proceedings which might have been commenced or continued by or against the syndicate under its former name may be commenced or continued by or against it under its new name. 19 Geo. V, c. 70, s. 1.

7. Every syndicate formed under this Act shall keep and divide its accounts so that each kind of service and benefit accorded to the members may be separately administered, and the funds or cash therefor be kept distinct. 14 Geo. V, c. 112, s. 6.

8. In addition to the special funds, a fund must be established for the general expenses of the syndicate. 14 Geo. V, c. 112, s. 7.

9. When a specified fund ceases to be self-supporting, it may be voluntarily or judicially liquidated without affecting the civil existence of the syndicate. 14 Geo. V, c. 112, s. 8.

10. As between members, special funds shall only be liable for their own debts except in a general liquidation when all the funds, after their particular debts have been paid, shall be turned into the general fund of the syndicate. 14 Geo. V, c. 112, s. 12.

11. The funds of the special mutual benefit and pension accounts shall be unseizable, save for the payment of the annuities and benefits to which a member of the syndicate may be entitled. 14 Geo. V, c. 112, s. 10.

12. Three or more professional syndicates may concert in the study and defence of their economic, social and moral welfare, and for such purpose form a union or federation upon complying with the provisions of section 2 of this act.

The by-laws of the union or federation shall determine the rules by which the syndicates forming part thereof shall be represented in the administrative council or at the general meetings.

Syndicates forming part of a union or federation shall not be liable for the debts of such union or federation. 14 Geo. V, c. 112, s. 11; 16 Geo. V, c. 62, s. 1.

13. Unions and federations of professional syndicates shall enjoy, in their own sphere, all the rights and powers conferred by this act upon professional syndicates and especially those provided for in sub-paragraph 1 of the second paragraph of section 6.

They may, in addition, institute councils of conciliation and arbitration between the syndicates, which shall, at the request of the interested parties, render decisions upon the disputes submitted to them. Such decisions shall be submitted to the Superior Court for homologation, and, after the judgment confirming them, shall have the force of a final judgment and be executory in the manner provided for the execution of judgments of the said Court. 14 Geo. V, c. 112, s. 12; 21 Geo. V, c. 8, s. 2.

14. The members of a professional syndicate may resign voluntarily, without prejudice to the syndicate's right to claim the assessment for the three months following such resignation. They shall not be personally liable for the debts of the syndicate. 14 Geo. V, c. 112, s. 13; 16 Geo. V, c. 62, s. 2.

14-*a*. If it be stipulated in any contract that workmen, or the members of a syndicate, union or federation of syndicates shall receive a stated wage, such workmen or members, although not a party to the contract, are entitled to the rate of wages therein stated, notwithstanding any renunciation thereto afterwards agreed upon by them, whether express or implied. 21 Geo. V, c. 98, s. 3.

14-*b*. Notwithstanding any law to the contrary, any municipal corporation may, by resolution of its council, grant an exemption of taxes on the immoveables belonging to any professional syndicate incorporated under this act or to the owner of any immoveable utilized for or used by any professional syndicate, as long as the said immoveables or immoveable be used as a hall for workmen's meetings or as a library or lecture hall or for other social purposes on such conditions as the said council may determine. 24 Geo. V, c. 67, s. 1.

DIVISION 2

LIQUIDATION

15. In the case of a voluntary or judicial dissolution, one or three liquidators shall be appointed by the general meeting, which shall be deemed as continuing to exist for the purposes of the liquidation.

The services of the liquidator or liquidators shall be gratuitous unless their remuneration shall have been previously fixed by the general meeting.

The property of the syndicate shall be distributed as follows:

(*a*) First, provision shall be made for payment of the costs of liquidation and of the debts of the syndicate;

(*b*) The property derived from gifts or legacies shall be returned, in accordance with the provisions of the act creating the gift or legacy, to the donor or to the legal representatives of the donor or of the testator. Failing such provisions, they shall be handed over to one or more similar or correlated undertakings determined by the by-laws, or, failing by-laws, by the ruling of the general meeting;

(*c*) Then, provision shall be made for the maintenance and administration, in trust, of the special indemnity funds established in accordance with section 6 of this act;

(*d*) The remaining assets must be devoted to one or more similar undertakings designated by the Lieutenant-Governor in Council. 14 Geo. V, c. 112, s. 14; 24 Geo. V, c. 67, s. 2.

DIVISION 3

Collective Labour Agreement

16. The collective labour agreement is a contract respecting labour conditions made between the representatives of a professional syndicate, or of a union, or of a federation of syndicates, on the one hand, and one or more employers, or representatives of a syndicate, union or federation of syndicates of employers, on the other hand.

Any agreement respecting the conditions of labour not prohibited by law may form the object of a collective labour agreement. 14 Geo. V, c. 112, s. 15.

17. The following shall be bound by the collective labour agreement:

1°. The employees and employers who signed it either personally or by authorized attorney;

2°. Those who, at the time the agreement was made, are members of a group, a party to the agreement, if, within eight clear days from the deposit hereinafter provided for in section 18 of this act, they have not resigned from such group and have not deposited a written notice in the office of the secretary of the group and with the Minister of Labour of the Province of Quebec;

3°. Those who are members of a group which later joins in such agreement, if, from the date of the notification of such adhesion, they have not withdrawn from the group in the manner and within the delay prescribed in the above paragraph 2;

4°. Those who, after the deposit of the agreement, join a group which was party to such agreement. 14 Geo. V, c. 112, s. 16.

18. The collective labour agreement shall be in writing, under pain of nullity.

It shall take effect only after an authentic copy or, in the case of a private writing, after a duplicate of the writing setting forth the terms of the agreement, has been deposited, by one of the parties, with the Minister of Labour. 14 Geo. V, c. 112, s. 17; 21 Geo. V, c. 19, s. 29.

19. The collective labour agreement shall give rise to all the rights and recourses established by law for the enforcement of obligations. 14 Geo. V, c. 112, s. 18.

20. The groups who may appear before the courts and who are parties to the collective labour agreement may exercise all rights of action arising out of such agreement in favour of each of their members, without having to establish a transfer of claim by the person interested, provided that the latter has been advised and has not declared that he was opposed thereto. The person interested may intervene at any time in the proceedings taken by the group.

Whenever an action arising out of the collective labour agreement is brought by a person or by a group, the other groups with authority to appear before the courts, whose members are bound by the agreement, may intervene at any time in the proceedings taken, on the grounds of the collective interest which the result of the litigation may have for their members. 21 Geo. V, c. 98, s. 4.

COLLECTIVE LABOUR AGREEMENTS EXTENSION ACT OF QUEBEC

(Statutes of Quebec, 1934, Chapter 56)

1. This Act may be cited as the *Collective Labour Agreements Extension Act.*

2. The Lieutenant-Governor in Council may order that a collective labour agreement, made between, on the one part, one or more associations of employees and, on the other part, employers or one or more associations of employers, shall also bind all the employees and employers in the same trade or industry; provided that such employees and employers carry on their activities within the territorial jurisdiction determined in the said agreement.

Whenever an order is made under the preceding paragraph, the only provisions of the collective labour agreement which thus become obligatory, upon the classes of employees and employers concerned, are those respecting rates of wages and hours of labour.

Such order shall remain in force during the same period of time as the collective agreement.

3. Any association of employees or employers, a party to a collective labour agreement, may request the Lieutenant-Governor in Council to pass an order in council under the preceding section.

Such request shall be made by a petition addressed to the Minister of Labour. The petition must be accompanied by a duly certified copy of such agreement.

4. Upon receipt of a petition, the Minister of Labour shall cause notice thereof to be given in the *Quebec Official Gazette* and, during the thirty days from the publishing of such notice, he shall receive the objections to the request contained in the petition.

At the expiration of such delay, the Minister, if he deems that the provisions of the collective labour agreement which is the object of such petition have acquired a preponderant significance and importance for the establishing of conditions of labour in a trade or industry in the region for which the agreement was entered into, may recommend the approval of the petition to the Lieutenant-Governor in Council.

The order in council establishing such approval shall come into force from and after its publication in the *Quebec Official Gazette.*

5. Subject to the formalities, delays and rules mentioned in section 4 of this Act, the Lieutenant-Governor in Council may, at the request of the parties to the collective agreement, repeal or amend the order in council passed under section 2.

Such repeal or amendment shall come into force from and after its publication in the *Quebec Official Gazette*.

6. The provisions of a collective labour agreement made obligatory under this Act shall, in the region fixed, govern all the individual labour contracts in connection with the trade or industry contemplated by the agreement.

However, when they are to the advantage of the employed, the provisions of an individual labour contract shall have effect unless they be expressly prohibited by those of a collective labour agreement which has been the object of an order in council under section 2.

7. 1. The parties to a collective labour agreement made obligatory under this Act must form a joint-committee charged with supervising and assuring the carrying out of such agreement. The Minister of Labour may add to such committee such delegates, not more than two in number, as shall be designated to him by the employers or employees who are not parties to the agreement.

Such joint-committee shall, through its delegate or delegates, be entitled: (*a*) to verify the rates of wages and hours of labour among the employers contemplated by the collective agreement made obligatory; (*b*) to exercise, for the benefit of each of the employees, all rights of action arising in their favour, from a collective agreement made obligatory, without having to prove an assignment of claim from the person concerned.

2. The joint-committee contemplated by the preceding subsection 1 may create a board of examiners charged with determining the qualifications of workmen and apprentices who benefit from the collective labour agreement made obligatory.

3. Subject to the approval of the Lieutenant-Governor in Council, the joint-committee and the board of examiners may adopt by-laws for their internal government, for the administration of the funds and for exercising the powers conferred upon them by this section.

8. If such board of examiners be established in accordance with subsection 2 of section 7, only the workmen and apprentices to whom such board of examiners shall have awarded a certificate of competency shall be entitled to exercise the civil claims which may appertain to them under a collective labour agreement made obligatory under this act, but they shall be allowed any other recourse.

The provisions of this section shall not apply to day labourers nor to workmen who do not specialize, and no certificate of competency shall be required in their case.

9. The board of examiners provided for by subsection 2 of section 7 shall be entitled to charge, as a fee, not more than five dollars for the examination of a workman nor more than one dollar for that of an apprentice.

The fees so collected shall be employed in defraying the expenses of the said board.

10. The members of an association of employees and the day labourers or the workmen who do not specialize shall be exempted from the examination contemplated by subsection 2 of section 7 and shall benefit from the provisions of section 8, if such association has its members undergo such an examination.

In the event of a dispute between an employer and an employee respecting such an examination, the board of examiners, contemplated in subsection 2 of section 7, shall settle the dispute, without appeal.

11. The Lieutenant-Governor in Council may refuse to apply the provisions of this Act to any industry liable, in his opinion, to suffer, through their enforcement, serious injury from the competition of foreign countries or of other provinces.

12. Every collective agreement, liable to be made obligatory, must take into account the economic zones of the Province in establishing labour conditions.

13. Nothing in this Act shall be deemed as compelling an employer or an employee to become or not to become a member of an association of his industry or trade.

14. This Act shall not apply to railway companies which are subject to the jurisdiction of the Parliament of Canada.